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Philip Morris International Inc.
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PHILIP MORRIS INTERNATIONAL INC. INTER-OFFICE CORRESPONDENCE

800 WESTCHESTER AVENUE, RYE BROOK, NEW YORK 10573-1301

TO: **Distribution** DATE: **June 2, 1994**

FROM: **Anne Okoniewski**

SUBJECT: **Updates: Marketing Issue Module**

Attached you will find the latest updates (5/01/94) to the *PMI Marketing Issue Module* which most of you received in January of 1993.

The majority of the updates revise the "speaking notes" and "summary" portions of the *Module*. However, one "paper" Chapter 7, "International Experiences With Advertising Bans" has been amended to reflect the current status of the Constitutional challenge to the advertising ban in Canada.

The legal department has asked that we number and record distribution of each *Module*. All updates will only be sent to those on the our distribution list **(see attached).** To ensure that each recipient has the most current material, we request that you do not duplicate the *Module* for further internal circulation. We would be happy to send additional copies. By the same token, if you pass your assigned set to someone else in the Company, please let us know who the new recipient is.

I would like to remind you that the Module should not be distributed in its entirety outside the Company. Past experience has shown that broader distribution within the industry (including NMAs) has resulted in our competitors lifting our work wholesale and merchandising it under their own name. This problem becomes particularly acute in instances where our public policy interests differ from those of our competitors.

Along with your updates, you will also be receiving the "Marketing Issues" brochure. As with the *Module* in its entirety, the brochure is not for external distribution. The "speaking notes" portions of each of the seven chapters of the *Module* are contained in the brochure which is intended to provide a handy summary of PM positions on various marketing issues. The list of updates can be found on the attached pages labeled "UPDATES."

Also, we have already begun the second round of updates in order to reflect ever changing information on the marketing issue. I encourage you to send any materials you think should be included in next round of updates to me in Rye Brook.

If you have any further questions, please let me know.

Distribution: (see attached)

cc (w/o enclosure): Wendy Burrell
Stig Carlson
David Greenberg
Don Harris

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UPDATES

To update your *Module*, please discard old pages and add new ones as appropriate. All of the latest updates are for **Volume I** of the *Module* and are as follows:

Discard	Add	Description of Revision
I "WHY DO YOUNG PEOPLE BEGIN SMOKING?"		
NOTES.1: 12/03/92	NOTES.1: 5/01/94	SPEAKING NOTES
SUM.1: 12/03/92	SUM.1: 5/01/94	SUMMARY
II "HOW ADVERTISING WORKS: COMPETITION IN A MATURE MARKET"		
NOTES.2: 12/03/92	NOTES.2: 5/01/94	SPEAKING NOTES
SUM.2: 12/03/92	SUM.2: 5/01/94	SUMMARY
III "CIGARETTE ADVERTISING AND TARGETING"		
NOTES.3: 12/03/92	NOTES.3: 5/01/94	SPEAKING NOTES
SUM.3: 12/03/92	SUM.3: 5/01/94	SUMMARY
IV "PROMOTIONAL ACTIVITY BY CIGARETTE MANUFACTURERS"		
NOTES.4: 12/03/92	NOTES.4: 5/01/94	SPEAKING NOTES
SUM.4: 12/03/92	SUM.4: 5/01/94	SUMMARY
V "BRAND AND CORPORATE SPONSORSHIP"		
NOTES.5: 12/03/92	NOTES.5: 5/01/94	SPEAKING NOTES
SUM.5: 12/03/92	SUM.5: 5/01/94	SUMMARY
VI "TRADEMARK DIVERSIFICATION"		
NOTES.6: 12/03/92	NOTES.6: 5/01/94	SPEAKING NOTES
SUM.6: 12/03/92	SUM.6: 5/01/94	SUMMARY
VII "INTERNATIONAL EXPERIENCE WITH CIGARETTE ADVERTISING BANS"		
NOTES.7: 12/03/92	NOTES.7: 5/01/94	SPEAKING NOTES
SUM.7: 12/03/92	SUM.7: 5/01/94	SUMMARY
AD.7: 12/03/92	AD.7: 5/01/94	PAPER

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47	Josh Slavitt	120/14

[1]Originally sent to Jan Goodheart
[2]Originally sent to Jacinto Hombravella
[3]Originally sent to Thorisman Wolff
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WHY DO YOUNG PEOPLE BEGIN SMOKING?

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WHY DO YOUNG PEOPLE BEGIN SMOKING?

Antismoking activists today are blaming advertising for smoking by young people.

- As early as 1975, antismoking activists and government researchers acknowledged that advertising does not cause people to smoke, and that family and friends are the primary influences on smoking by young people.
  - British Journal of Addiction (1991, 1992). Articles emphasized key role of parents and family development in juveniles' smoking decisions. Advertising not mentioned as significant factor in either initiation or maintenance of juvenile smoking.
  - Study of Japanese youth (1988) showed that peer smoking was "most strongly related" to individual's smoking.
  - Study for government of Hong Kong (1990) found that prevalence of youth smoking "is significantly related to family smoking habits."
  - WHO regional director: "Smoking among children and adolescents is heavily linked to smoking behavior of parents." (1988)
- Four-country survey by the World Health Organization supports decisive influence of family and peers – "When young people start smoking, the most important predictor is the smoking behavior and smoking related activities of significant others."
- In Finland, Helsinki researchers found that smoking among juveniles is higher today than when tobacco advertising was ban in 1978.
- In Norway, tobacco advertising was banned in 1975. Total incidence of daily smoking among adults remained essentially unchanged between 1979 and 1989. If juvenile smoking incidence had declined significantly since 1975, adult smoking incidence would have fallen correspondingly.

Researchers concluded: "Even though the law to stop tobacco advertising has a meaningful content, we cannot see that it has had a fundamental effect upon the sale or use of tobacco."

- Experts who have studied the issue for advertising and tobacco industries also have reported that a young person's decision to start smoking is influenced primarily by his parents, peers and siblings.

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- A 16-country Children's Research Unit (CRU) study found that in all countries surveyed, chances of a child smoking were low in households where there were no other smokers.

- Independent survey by RBL Research International: 1) children generally have high levels of awareness for products in which they have no consumer interest; and 2) children who had higher recognition of cigarette advertisements were not more likely to have tried smoking:

  "[A]dvertising recall and popularity cannot be taken by themselves as evidence of advertising effectiveness or of unintentional advertising influence."

Conclusion

- There is no reason to believe that banning cigarette advertising would lead to reduced smoking among young people, given the demonstrated role of parents and siblings and the absence of evidence that advertising has any significant effect on youth smoking.

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WHY DO YOUNG PEOPLE BEGIN SMOKING?

- Today, antismoking activists are pointing the finger at tobacco advertising as the cause of smoking by minors. For years before that, however, antismoking activists and government researchers admitted that advertising does not cause people to smoke – that family and friends are the primary influences on smoking by young people.

- Numerous studies, including a four-country survey by the World Health Organization, confirm the conclusion that family and peers are the primary predictors of smoking behavior of young people, and that advertising plays no significant role.

- For example, in Finland, where tobacco advertising has been banned for more than a decade, the incidence of smoking among youth increased since imposition of the ban.

- In Norway, tobacco advertising was banned in 1975. But overall, smoking prevalence has remained essentially unchanged since the late 1970's, making a decline in smoking among young people highly doubtful.

- A 16-country Children's Research Unit (CRU) study found that in all countries surveyed, chances of a child smoking were lowest in households where there were no other smokers, and highest in households where parents or older siblings smoked.

- A recent independent survey found that simply because children have a high level of awareness for a brand, this does not mean that they have any interest in using the product. As a matter of fact, the children who had higher recognition of cigarette advertisement were not more likely to have tried smoking.

- There is no reason to believe that banning cigarette advertising would lead to reduce smoking among young people, given the demonstrated role of parents and siblings and the absence of evidence that advertising has any significant effect.

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WHY DO YOUNG PEOPLE BEGIN SMOKING?

"When young people start smoking, the most important predictor is the smoking behavior and smoking-related activities of 'significant others'."

WHO Cross-National Survey[1]

Antismoking activists have long criticized cigarette advertising. But the thesis that cigarette advertising is a major determinant of smoking, and that reducing smoking depends on banning cigarette advertising, has acquired a widespread following only in the last several years. As the antismoking movement has become increasingly politicized in recent years -- shifting from proselytizing smokers to crusading against tobacco companies -- the movement's attacks on cigarette advertising and promotion have become a central part of its programme.

Before banning cigarette advertising became one of its principal *political* goals, however, the antismoking movement (in agreement with government officials and other experts) emphasized family and peer influences as the key determinants of smoking. ***Antismoking advocates acknowledged that cigarette advertising does not make people start smoking and that banning cigarette advertising would not make them stop.*** Antismoking advocates now are careful to include

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[1] Aarø, Wold, Kannas & Rimpelä, "Health Behavior in School-children: A WHO Cross-National Survey," *Health Promotion*, vol. 1, no. 1, pp. 17, 21 (May 1986).

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advertising in any list of the key determinants of smoking and to place advertising bans at the top of any antismoking agenda.

The following pages compile admissions by anti-smoking advocates and others that advertising does not cause people to smoke, statements recognizing the decisive influence of family and friends on smoking behavior, and studies confirming that banning cigarette advertising does not reduce smoking.

1. Admissions that Advertising Does Not Cause People To Smoke

- As early as 1975, Karl Wärnberg of the Swedish Export Council told the 3rd World Conference on Smoking and Health:

> "To summarize, there is no evidence to support the view that a ban on advertising would have a positive effect on smoking habits. No empirical research has been able to show that aggregate brand advertising leads to greater total tobacco consumption. Nor has anything been found to suggest that advertising entices non-smokers, young people in particular, into becoming smokers. It follows, therefore, that there can be no evidence showing that a ban on advertising would result in reduced tobacco consumption and fewer new smokers."[2]

- At the same conference, Professor James L. Hamilton of Wayne State University stated that advertising

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[2] K. Wärnberg, "Ban on Advertising - What Then?", *Proceedings on the 3rd World Conference on Smoking and Health*, vol. II, p. 854 (New York, 1975).

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bans "have not been an effective policy for reducing cigarette smoking."[3] Dr. Hamilton explained that cigarette advertising is "a competitive weapon" and "has not been used as a means for expanding [the] market."[4]

- The Ontario Task Force on Smoking acknowledged in 1982 that "[n]o persuasive empirical evidence exists" to support the contention that advertising is a significant determinant of smoking.[5]

- Michael Pertschuk, the former Chairman of the U.S. Federal Trade Commission who now helps direct the antismoking lobby in the U.S., stated in 1983 that "[n]o one really pretends that advertising is a major determinant of smoking in this country or any other."[6]

- Elizabeth Whelan of the American Council on Science and Health stated in 1985 that an advertising ban would "probably not" reduce cigarette consumption in the U.S.[7]

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[3] Hamilton, "The Effects of Cigarette Advertising Bans on Cigarette Consumption," *id.* at 829.

[4] *Id.* at 830-31.

[5] Task Force on Smoking, *Smoking and Health in Ontario: A Need for Balance* 104 (1982).

[6] Tobacco Issues, Institute of Politics, Harvard University, April 27, 1983, Tr. 8-9.

[7] "Second Thoughts on a Cigarette-Ad Ban," Wall St. J., Dec. 18, 1985, at 28, col. 6.

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- In 1989, then-U.S. Surgeon General Koop acknowledged that cigarette advertising and promotion have not been shown to increase the level of tobacco consumption. He stated:

> "There is no scientifically rigorous study available to the public that provides a definitive answer to the basic question of whether advertising and promotion increase the level of tobacco consumption."[8]

- In 1991, William Waldgrave, the U.K. Secretary of State for Health, stated:

> "[T]here is no evidence really, in Europe, that having a total ban on poster advertising has much, has a particular effect on tobacco consumption. The countries that have it don't do better, they do worse, than [the countries that] do."[9]

2. Emphasis on Family and Peer Influences

Before launching their attack on cigarette advertising, antismoking advocates and government researchers appeared to acknowledge that family and friends are the primary influences on smoking by young people. Advertising was not assigned a major role.

- In 1969, data gathered for the American Cancer Society demonstrated that "[p]ersons in the environment are

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[8] U.S. Department of Health and Human Services, *Reducing the Health Consequences of Smoking: A Report of the Surgeon General* 512 (1989).

[9] Mike Carlton's Drivetime, LBC Newstalk, June 4, 1991, Tr. 3.

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clearly very important in shaping smoking behavior: Where parents or other frequently seen adults smoke, youngsters are more likely to take up the habit. * * * Most influential of all seem to be friends."[10]

- In 1983, Dr. Mortimer Lipsett, the Director of the U.S. National Institute of Child Health and Human Development, testified that "[t]he most forceful determinants of smoking [by young people] are parents, peers, and older siblings."[11] Dr. Lipsett also noted:

> "If one parent smokes, the child is *twice* as likely to smoke as one reared in a nonsmoking household. If both parents or one parent and an older sibling smoke, the chances become *four* to one. If the child's best friend smokes, there is a *90 percent* probability that the child will smoke too."[12]

Researchers looking at the long-term correlation of factors provide further support for the thesis that peers are the most dominant influence in youth smoking.[13] These

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[10] Quoted in *Advertising of Tobacco Products: Hearings before the Subcomm. on Health and the Environment of the House Comm. on Energy and Commerce*, 99th Cong., 1st Sess. 683 (1986).

[11] *Smoking Prevention Act: Hearings on H.R. 1824 before the Subcomm. on Health and the Environment of the House Comm. on Energy and Commerce*, 98th Cong., 1st Sess. 53 (1983) (statement of Mortimer B. Lipsett, M.D.).

[12] *Ibid.* (emphasis added).

[13] L.L. Pederson & N.M. Lefcoe, *Short and Long-term Prediction of Self-Reported Cigarette Smoking in a Cohort of Late Adolescents: Report of an 8-Year Follow-up of Public School Students*, Preventive Medicine 16(3), 432, 442-43 (May 1987).

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findings reflect a worldwide phenomenon and are not limited to the United States.

- The Swedish National Smoking and Health Association concluded in 1983 that "the smoking habits of young people are dependent on the smoking habits of their parents."[14]

- Monique Bégin, then Canada's Minister of National Health and Welfare, stressed in a 1983 address that "[t]he people who most influence a child to start smoking are his or her friends and family."[15] In Canada, it has been found, peer influences on smoking increase during adolescence whereas parental influences remain constant. The number of smoking friends and the percent of older siblings who smoked were found to be "consistent and powerful" predictors of future smoking, both in terms of initial experimentation and in the transition to becoming a regular smoker.[16] Dr. M.J. Ashley of the University of Toronto reported in 1983 that

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[14] *Smoking Control in Sweden* 9 (1983).

[15] Bégin, "Address to the Fifth World Conference on Smoking and Health," Proceedings on the 5th World Conference on Smoking & Health, vol. I, p. 26 (Winnipeg, 1983) ["5th World Conference"].

[16] Moore, Timothy E., *Antecedents of Smoking Onset in Children and Adolescents: A Review*, Department of Psychology, Glendon College, York University, Toronto Canada, p. 19-22 (April 2, 1987); *see also Cross-Sectional Analysis of Variables Related to Cigarette Smoking in Late Adolescence*, J. Drug Education, 15(3) 225, at 230-33 (1985) (study funded by National Health Research and Development Program, Health and Welfare Canada).

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Canadian boys and girls whose fathers or mothers smoke are significantly more likely to smoke than Canadian boys and girls whose fathers and mothers do not.[17]

- Studies conducted in 1975 and 1980 in Norway showed that where both parents smoked, and they permitted their children to smoke, about 67 percent of the girls aged 15 were daily smokers. Where neither parent smoked, and the children were not permitted to smoke, the figures fell to 9 percent for boys and 11 percent for girls.[18]

- Articles in the *British Journal of Addiction* also emphasize the key role of parents and family development in juvenile smoking decisions.[19] These studies have observed that non-smokers with siblings who smoked were much more likely to start smoking than those with non-smoking siblings, that parents' smoking status has little effect on children's smoking if there are siblings who smoke, and that children from single-parent homes, for example, are more likely to be smokers than those from homes in which both parents are

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[17] M.J. Ashley, "Women and Smoking," *5th World Conference*, vol. I, p. 10 (1983).

[18] *See* Hauknes, Lochsen, Aarø, "Planning, Development and Evaluation of a Special Smoking and Health Program for Pupils Aged 12-13 Years," *5th World Conference*, vol. 1, p. 722 (1983).

[19] "Why children start smoking," Brit. J. Addict. 87: (1) 17-25 (1992); Isohanni, M., Moilanen, I., and Rantakallio P., "Determinants of teenage smoking, with special reference to non-standard family background," Brit. J. Addict. (86) 391-398 (1991).

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present. Advertising is not mentioned as a significant factor in either the initiation or the maintenance of juvenile smoking.

- A study of Japanese youth showed that peer smoking was "most strongly related" to individual's smoking, while parental and sibling smoking, educational aspiration and attitude toward prohibitions on youth smoking also were significantly related.[20]

- A study for the government of Hong Kong also found that the prevalence of youth smoking "is significantly related to family smoking habits," noting that smoking mothers and sisters are particularly significant factors "in eastern society where parental supervision is very much exercised by female members of the family."[21]

- WHO's regional director for Europe likewise has reiterated that "smoking among children and adolescents is heavily linked to the smoking behavior of parents."[22]

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[20] H. Ogawa, S. Tominaga, Gellert and Aoki, *Smoking Among Junior High School Students in Nagoya, Japan*, International Journal of Epidemiology 17(4) 814-20 (March 1988).

[21] A.B. Herts, "Smoking Among Junior Secondary School Children in Hong Kong in 1990," Hong Kong Council on Smoking and Health, at 17 (1990).

[22] J.E. Asvall, M.D., "A Smoke-Free Europe - A Challenge for All for Health," First European Conference on Tobacco Policy, Madrid (Nov. 7-11, 1988).

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3. WHO Cross-Country Research

The decisive influence of family and peers on youth smoking is supported by a four-country survey conducted in 1983-1984 by the World Health Organization ("WHO"), the results of which were published in 1986:

> "When young people start smoking, the most important predictor is the smoking behavior and smoking-related activities of 'significant others'."[23]

The WHO survey found that "[t]he strongest statistical relationships are found with the smoking habits of the best friend."[24] The survey also found that smoking among schoolchildren is "strongly related to the number of smokers in the family."[25] The researchers found "***no systematic differences***" between the smoking behavior of young people in countries where tobacco advertising is completely banned and in countries where it is not.[26]

In an update focusing on the prevalence of youth smoking among schoolchildren in 1986-1987, Aarø and two colleagues reaffirmed the results of the earlier study.[27] They

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[23] Aarø, Wold, Kannas & Rimpelä, "Health Behavior in Schoolchildren: A WHO Cross-National Survey," *Health Promotion*, vol. 1, no. 1, pp. 17, 21 (May 1986).

[24] *Id.* at 21.

[25] *Id.* at 28.

[26] *Id.* at 32 (emphasis added).

[27] J. van Reek, H. Adriaanse and L. Aarø, "Smoking by schoolchildren in eleven European Countries," *Proceedings of*

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found, in general, that the countries with the highest incidence of youth smoking are those in which tobacco advertising is banned, while the countries with the lowest incidence of youth smoking are those in which some tobacco advertising is permitted.

In both Finland and Norway, tobacco advertising has been banned for more than a decade. According to Aarø and his colleagues, in Finland 29 percent of the 15-16 year-old boys and 20 percent of the 15-16 year-old girls were daily smokers in 1986-1987. In Norway 16 percent of the 15-16 year-old boys and 17 percent of the 15-16 year-old girls were daily smokers in 1986-1987.

In both Austria and Switzerland, by contrast, tobacco advertising is permitted. In Austria 12 percent of the 15-16 year-old boys and 13 percent of the 15-16 year-old girls were daily smokers in 1986-1987. In Switzerland 10 percent of the 15-16 year-old boys and 12 percent of the 15-16 year-old girls were daily smokers in 1986-1987.

A "Special Report on The Impact of Tobacco Advertising" published in the *International Journal of Advertising* in 1990 reiterates these conclusions:

> "Cross-national studies on smoking indicate that the prevalence of smoking is high in countries with an almost complete ban on tobacco advertising (Australia,

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[27](...continued)
the 7th World Conference on Tobacco and Health, p. 301 (Perth, 1991) ("7th World Conference").

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> Canada, Norway and Sweden) and low in countries with a more liberal advertising climate (Argentina, Hong Kong, Japan, Kenya, and The Philippines). This indicates that any reinforcing and justifying effect of advertising does not cause adolescents to start smoking."[28]

Significantly, in the Hong Kong government-sponsored study, no children mentioned advertising as a reason for smoking. The Hong Kong study confirms that parents and peer group appear to be the most significant influences on youth smoking.[29]

In Singapore, where tobacco product advertising has been banned since 1970, the Health Ministry claims that smoking among 15-19 year-old boys jumped from 5.5 percent in 1987 to 12.3 percent in 1991, and that smoking among 15-19 year-old girls increased during the same period from 0.1 percent to 0.7 percent.[30]

4. The Scandinavian Experience

(a) Finland

In *Finland*, tobacco product advertising has been banned completely since 1978. Nevertheless, University of

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[28] van Raaij, W.F., "The Effect of Marketing Communication on the Initiation of Juvenile Smoking," *International Journal of Advertising* 31-32 (1990) (citation omitted).

[29] A.B. Herts, "Smoking Among Junior Secondary School Children in Hong Kong in 1990," Hong Kong Council on Smoking and Health, 1990.

[30] "More Smoking Despite Campaign," The Sunday Times, May 24, 1992.

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Helsinki researchers have found that smoking among juveniles increased after imposition of the ban.[31] Smoking incidence among the same age group had been declining sharply before the ad ban was imposed.

In particular, the incidence of smoking among 12-18 year-olds of both sexes had been declining sharply in the period *preceding* the ban in 1978, but generally stabilized between 1979 and 1985. Then, between 1985 and 1987, the evidence showed "a clear increase in smoking . . . among adolescents." The researchers noted that the increase had been greatest among girls aged 16-18 -- from 25 percent in 1979-1985 to 32 percent in 1985-1987.

These trends showed no sign of weakening in 1987-1989: "The percentage of 14 to 18 year olds who smoke daily in 1989 was greater than the respective percentage when the *Act on Smoking* came into effect in 1977" (p. 3) -- twelve years earlier! As researchers again noted in a 1992 article, **"[I]t has been found that both smoking and drinking have increased among teenagers in Finland since the mid-1980s."**[32]

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[31] Rimpelä, A., Rimpelä, M., Hara-Eteläharju, M., Pykäri, P., Siivola, M., and Karvonen, S., *Young People and Smoking 1973-1989*, University of Helsinki, Department of Public Health Science, Publication 2/1989 (1989); Rimpelä, M., Rimpelä, A., Karvonen, S., Rahkonen, O., Siivola, M., and Kontula, O., *Changes in Adolescents' Health Habits 1977-1987: Preliminary Report to the National Board of Health* (May 1987).

[32] Rahkonen, O., Berg, M.-A. & Puska, P., "The development of smoking in Finland from 1978 to 1990," Brit. J. Addict. (1992) 87(1) 103-110.

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(b) Sweden

In *Sweden*, tobacco advertising has been severely restricted since 1979. Yet, the Swedish National Smoking and Health Association reported in 1983 that between 1980 and 1982 -- *after* imposition of the 1979 restrictions -- the incidence of smoking among teenagers in Sweden has not declined.[33] Smoking among 16-year-old males, which had dropped from above 40 percent in 1971 to 20 percent in 1979, increased to at least 23 percent in 1982. During the same period, the incidence of smoking among 13-year-old males rose from about 5 percent to over 8 percent. Following a brief, subsequent decline, smoking began to increase again in 1984.[34] As anti-tobacco researchers from Sweden acknowledged in 1991, "tobacco use is once more on the rise in the younger age groups in Sweden."[35]

(c) Norway

In *Norway*, tobacco advertising was banned in 1975. Some who favor tobacco advertising bans claim that smoking among 13-15 year-old Norwegian schoolchildren declined after advertising was banned in 1975, reversing a supposedly upward

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[33] National Smoking and Health Association, *Smoking Control in Sweden* (1983).

[34] National Board of Health and Welfare, *Tobacco Control in Sweden* (1987).

[35] L. Silferforsen, A. Nygren and G. Bolinda, "The Swedish Society of Medicine's and the Folksam Group's Action Programme Against the Use of Tobacco," *7th World Conference*, p. 324.

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trend.[36] But even these antismoking advocates acknowledge studies indicating that youth smoking had already peaked by 1974, *before* tobacco advertising was banned.[37]

According to a study in the *Journal of the Norwegian Medical Association* by researchers at the Department of Psychiatry and Behavioural Medicine, University of Trondheim, Östmarka Hospital, the total incidence of daily smoking among Norwegian adults (defined as 15 years of age and older) remained essentially unchanged between 1979 (38 percent) and 1989 (36 percent).[38]

Götestam and Götestam have suggested that these national data, which were from the Norwegian National Tobacco Council, may have understated the percentage of adult daily smokers in 1979 and 1989, and may have reversed the actual trend. According to their own smaller study, Götestam and Götestam reported that 43 percent of adult Norwegians were

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[36] Bjartveit, K., Legislation and Political Activity, *5th World Conference*, Vol. 1; Bjartveit, K. and Lund, K., *Smoking Control in Norway* (1987).

[37] K. Bjartveit, "Fifteen Years of Comprehensive Legislation: Results and Conclusions," *7th World Conference*, p. 74 (citing Aarø, L.E., Hauknes, A. & Berglund, E.-L., "Smoking among schoolchildren 1975-1980," Scan. J. Psychol. 22:161-169, 1981; Irgens-Jensen, O. & Rud, M.G., "Bruk av stoffer, alkohol og tobakk blant gutter og jenter Oslo 1968-1976," Universitsforlaget, Oslo 1979).

[38] Götestam, K.O. and Götestam, K.G., "Smoking and Attitudes Toward Smoking in Norway," *Tiddskr Nor Laegeforen* (1990), 17(110): 2260-1 - and subsequent correspondence with Dr. Bjartveit in the same journal: 1990, 18(110): 2395-8; 1990, 19 (110): 2567; 1990, 20(110): 2689-90 [including chart].

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daily smokers in 1979 and 48 percent were daily smokers in 1989.

Whichever data are used, ***if juvenile smoking incidence had declined significantly since 1975, adult smoking incidence would have fallen correspondingly.*** Adult consumption, however, did not decline. Reviewing the impact of the 1975 ban, Götestam and Götestam concluded: ***"Even though the law to stop tobacco advertising has a meaningful content, we cannot see that it has had a fundamental effect upon the sale or use of tobacco."***

Further assessing the hypotheses that an advertising ban leads to reduced tobacco sale and to reduced smoking against consumption statistics in a 1992 article, Götestam and Götestam concluded: "The results supported neither hypothesis!" Noting as well that annual adult (over age 15) per capita consumption has *increased* from 2.08 kg. in 1981 to 2.14 kg. in 1990, they reiterated: **"The enacted legislation does not seem to have affected either tobacco sale or number of regular smokers in Norway."**[39]

As a team of antitobacco researchers told the 7th World Conference on Tobacco and Health in 1991:

> "Although Norway, in many respects, has been a pioneer in the campaign against tobacco, **the prevalence of smoking in Norway has changed very little in the last eight years. * * ***

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[39] Götestam, K.O. & Götestam, K.G., "Changes in Smoking Legislation, Attitudes, and Behavior," *Psychological Reports* (1992), 70: 531-7.

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> [T]he prevalence of daily smoking among men was reduced from 52% in 1973-1974 to 40% in 1981. This percentage has remained nearly constant since then. Among women, the prevalence rate of regular smoking has been constant, about 32-33% since 1973."
>
> * * *
>
> "During the period when the prevalence of regular smoking was constant in Norway, the prevalence of regular smoking in the USA was reduced by between 1/3 and 1/4."[40]

5. Other Studies

Experts who have studied the cigarette advertising issue for the advertising and tobacco industries also have reported that a young person's decision to start smoking is influenced primarily by his parents, peers and siblings.

Particularly instructive is the testimony in 1986 before the House Subcommittee on Health and the Environment by Dr. Roger D. Blackwell, Professor of Marketing at Ohio State University, and Dr. Scott Ward, Professor of Marketing at The Wharton School, University of Pennsylvania.[41] Dr. Blackwell explained that --

> "From his parents a child acquires basic attitudes toward smoking. The more the parents smoke, the more likely the child

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[40] T. Sanner, et al., "Action Plan "Smoke-Free Norway Year 2000," *7th World Conference*, p. 317-18.

[41] *Advertising of Tobacco Products: Hearings before the Subcomm. on Health and the Environment of the House Comm. on Energy and Commerce*, 99th Cong., 2d Sess. (1986). Dr. Blackwell is co-author of a leading textbook on consumer behavior in the U.S., and Dr. Ward is the author of a widely used marketing management casebook in the U.S.

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> will smoke; the more the parents discourage smoking the less likely the child will smoke.
>
> "Friends also play a significant role in the youngster's decision to try smoking and become a smoker. And so does the image of 'the smoker' that most children develop. Children report a distinct image of the stereotypical smoker, and it is not the flattering image that anti-tobacco advocates attribute to cigarette advertising.
>
> "The stereotypical smoker is viewed by children as less educationally successful, less healthy, and 'tougher' than the stereotypical nonsmoker -- and nonsmokers generally view other nonsmokers as more desirable to have as friends than smokers.
>
> "None of the research suggests that advertising influences children to view smoking in a positive light -- we are talking about not intent but actual response among the children. To the contrary, the research that is available revealed in young people a skepticism and distaste for cigarette advertising."[42]

Dr. Blackwell's observations on children's skepticism are also corroborated by other findings on how children view television commercials for all kinds of products.[43]

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[42] *Id.* at 708. *See also* prepared statement of Dr. Blackwell, *id.* at 710-26 (discussing research).

[43] *See* T.R. Donohue, et al., *Do Kids Know What TV Commercials Intend?*, Journal of Advertising Research (20:5) 51-57 (1980); J.R. Rossiter, *Does TV Advertising Affect Children?*, J. Ad. Res. (23) 49-53 (1984); P.P. Aitken, D.S. Leathar and F.J. O'Hagan, *Children's Perceptions of Advertising for Cigarettes*, Social Science and Medicine (21) 785-97 (1985).

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These conclusions coincide with those of a 16-country study by the Children's Research Unit (CRU) of London, *Juvenile Smoking Initiation & Advertising* (March 1989).[44] In all countries surveyed, the chances of a child smoking were low in a household where there were no other smokers.[45] The lowest incidence of smoking among youth in the CRU study was found in Hong Kong, where about 11 percent of 15-year-olds smoke.

In addition, the CRU study found that even when asked specifically whether advertising was a reason for their smoking their first cigarette -- a "prompted" response, often

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[44] CRU 16-Country Study at 8, 11-13. The CRU sixteen-country study involved fifteen independent investigations (Argentina, Australia, Canada, Hong Kong, Italy, Japan, Kenya, Kuwait, New Zealand, Norway, Philippines, Spain, Sweden, Switzerland and Turkey) involving interviews with over 1000 children 7-to-15/16 years of age in each country: U.K. data were gathered from government sources for comparison purposes. The CRU study was funded by the tobacco industry and was published by the International Advertising Association.

[45] CRU 16-Country Study at 11. Earlier studies by the CRU have consistently found that parents play a critical role. In Canada, for example, the CRU reported that a child whose parents smoke was nearly twice as likely to try cigarettes as a child whose parents do not smoke (43 percent to 24 percent); a child whose siblings smoke was more than twice as likely to try cigarettes as a child whose siblings do not smoke (72 percent to 30 percent); and a child whose closest friends smoke was more than three times as likely to try cigarettes as a child whose closest friends do not smoke (80 percent to 24 percent). Children's Research Unit, *An Examination of the Factors Influencing Juvenile Smoking Initiation in Canada* (May 1987).

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criticized by market researchers -- in most countries, none of the children answered affirmatively.[46]

Studies indicating that young smokers may "like" cigarette advertisements do not imply any "cause and effect" relationship between ads and smoking. At most, they merely confirm that those who smoke are more likely to pay attention to ads and hold positive attitudes or brand preferences than those who do not.[47] Moreover, a survey by the independent organization RBL Research International points out that children generally have high levels of awareness for products in which they have no consumer interest -- but that this does not establish that an advertising message has been accepted by them: "[A]dvertising recall and popularity cannot be taken by themselves as evidence of advertising effectiveness or of unintentional advertising influence."[48]

Indeed, RBL found that those children who had higher recognition of cigarette advertisements were *not* more likely to have tried smoking.[49] RBL also found it probable that the

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[46] Table 3, at 18.

[47] Moschis, *Cigarette Advertising and Young Smokers*, Journal of Advertising Research 51, 54 (April/May 1989). As Moschis notes, proving a correlation is but a first step in inferring causality; other factors which might be associated with the variables must also be ruled out. *Id.* at 53.

[48] RBL Research International, *Children and Advertising* at 11 (prepared for The Advertising Association, U.K. 1987).

[49] *Id.* at 71-73.

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main determinants of smoking behavior are situational and social factors rather than advertising.[50]

6. Conclusion

Given the demonstrated role that parents and other role models play in smoking by young people and the absence of evidence that advertising has any significant effect in this regard, there is no reason to believe that banning cigarette advertising would lead to reduced smoking among young people.

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[50] *Id.* at 13.

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HOW ADVERTISING WORKS: COMPETITION IN A MATURE MARKET

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HOW ADVERTISING WORKS: COMPETITION IN A MATURE MARKET

- Tobacco advertising does not cause people to smoke. The contention that it does overlooks the function of advertising in a mature product market, which is to maintain customer loyalty and to get existing consumers to switch brands.

- Studies show that advertising in mature markets is not significantly related to overall product demand, so advertising restrictions and bans aimed at reducing smoking won't have such an impact.

- In fact, studies show that countries where tobacco advertising is severely restricted or banned often have a greater incidence of smoking than countries that allow tobacco advertising.

- As in any industry, the incentive to advertise particular brands is substantial. First of all, keeping or gaining a single market - share point can be worth hundreds of millions of dollars in sales.

- And every year, numerous smokers may switch brands–as many as one in four smokers experiment with different brands in the U.S. in any given year; in Japan the percentage is as high as 30%.

- When proponents of cigarette advertising bans suggest that advertising influences people to smoke, they are both overestimating the power of advertising and underestimating the intelligence and free will of consumers.

- In addition, the counterarguments are out there and cannot be missed. The antitobacco point of view is one of the most widely disseminated consumer messages in the world, and many countries require health warnings on tobacco products and in tobacco advertising.

- Basically, ad ban proposals are based on the flawed assumptions that tobacco advertising influences people to begin smoking – which studies show it does not – and that instituting controls means smoking will decline – which studies also have shown will not be accomplished.

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HOW ADVERTISING WORKS: COMPETITION IN A MATURE MARKET

- Contention that tobacco advertising influences people to smoke overlooks the function of advertising in a mature product market: 1) to maintain customer loyalty; and 2) to get existing consumers to switch brands.

- Distinction between "new" and "mature" product markets:

  - New: advertising attempts to inform about general product attributes and benefits and creates demand for product category in the course of promoting demand for particular brands.

  - Mature: advertising promotes and provide information on particular brands of a product, not the product category itself.

- Many studies show that advertising in mature markets is not significantly related to overall product demand, therefore, "... Government policies which aim to reduce smoking prevalence by instituting advertising bans are therefore extremely unlikely to have any impact". (Michael J. Waterson, "Advertising and Tobacco Consumption: An Analysis of the Two Major Aspects of the Debate" (1991).)

Primary Objectives of Advertising in "Mature" Product Markets

- Incentive to advertise particular brands is substantial. Gaining single market-share point or keeping single-market share point means sales of:

  - $452 million in the U.S.
  - $262 million in Japan
  - $194 million in Germany

- Every year, numerous smokers may experiment with different brands:

  - 1 of 4 in U.S.
  - 30% in Japan
  - Between 8% and 19% in Brazil, Germany and Turkey

Consumer Response to Advertising

- Proponents of cigarette advertising ban overestimate power of advertising.

- Proponents of cigarette advertising ban underestimate the intelligence and free will of audiences to whom it is directed.

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- Advertisers realize:
  - disseminating commercial messages does not guarantee they will be noticed.
  - if noticed, they will not necessarily be retained.
  - when message is memorable, the brand is not necessarily recalled.
  - when brand is recalled, there is no guarantee there was any interest in purchasing brand or product category.
- With cigarette advertising, no viewer can ignore counterarguments. Antitobacco point of view is one of the most widely disseminated consumer messages in the world, including health warnings.

Conclusion

- Proposals to ban or restrict advertising overestimate power of advertising and underestimate sophistication of consumers.
- Because proposals are based on flawed assumptions, advertising bans and content controls will not have the effect proponents claim.

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HOW ADVERTISING WORKS: COMPETITION IN A "MATURE" MARKET

"There is little evidence that advertising results in additional smoking. As with many products, [cigarette] advertising mainly shifts consumers among brands."

U.S. President's Council of Economic Advisors[1]

Introduction

The contention that tobacco advertising influences people to smoke overlooks the function of advertising in a "mature" product market such as the market for cigarettes, toothpaste, laundry detergent or automobiles.[2]

In a mature product market, where the product category is long-established and awareness of the product category is universal, advertising generally does not operate to increase overall demand. Advertising instead operates to maintain or expand market share *within* the product category -- to maintain the loyalty of consumers who already use the brand being advertised and to switch consumers who use other brands.

To be successful, brand advertising must overcome two hurdles: it must attract the viewer's attention and it

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[1] *Economic Report of the President* 186 (1987).

[2] As used in the pages that follow, the term "advertising" encompasses the entire range of activities by which a manufacturer encourages consumers to purchase its brands rather than those of its competitors -- not only "textual" communications but also product sampling, premium or discount offers, sponsorships, etc.

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must distinguish the advertised brand from the multitude of others on the market. To break through the "clutter" that exists in the advertising marketplace, advertisers must frequently employ vivid settings and employ bold graphic designs and memorable brand slogans. To separate the advertised brand from its competitors, an advertiser must create a distinct "personality" for the brand. Manufacturers typically commit significant resources both to break through the "clutter" and to sustain brand identification and loyalty to the brand personality. Enforced foreclosure of imagery, themes and slogans in cigarette advertising would be tantamount to no advertising at all. Such advertisements would not attract the attention of smokers or distinguish one brand from another.

It should come as no surprise that cigarette manufacturers are prepared to spend large sums just to *maintain* their market share. In the U.S., a single market-share point was worth $452 million in sales in 1991, and *one out of every four customers* may switch among brands in any given year. In Japan, one market-share point was worth $262 million at 1991 exchange rates. In Germany, one market-share point is estimated to be approximately $194 million.

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A. The Distinction Between "New" and "Mature" Product Markets

Certainly all companies, cigarette companies included, use advertising to promote their products.

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Proposals to ban cigarette advertising, however, reflect a basic misunderstanding of how advertising works. Much advertising, including cigarette advertising, neither is intended to, nor has the effect of increasing the number of people who use the "product category." Instead, advertising is used to serve a variety of disparate objectives depending on whether the product category is "new" or "mature," and depending on whether the product category is in competition with other product categories.[3]

In the case of a "new" product category like video cassette recorders, compact disc players, personal computers or cellular telephones, advertising attempts to inform people about general product category attributes and benefits. Because the product category is new, advertising functions as a means by which consumers learn that the product category exists and how it might be useful to them. At this stage, advertising promotes demand for the product *category* in the course of promoting demand for particular *brands* -- although

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[3] For discussion of the concept of "product life cycle," and the role of promotion for mature product categories, *see* C. Wasson, *Dynamic Competitive Strategy and Product Life Cycles* (1978); R. Polli & V. Cook, "Validity of the Product Life Cycle," Journal of Business (Oct. 1969); R. Buzzell, "Competitive Behavior and Product Life Cycles," in *New Ideas for Successful Marketing* (J. Wright & J. Goldstucker eds. 1966); R. Hammermesh & S. Silk, "How to Compete in Stagnant Industries," Harvard Business Review (Sept.-Oct. 1979); J. Swan & D. Rink, "Fitting Marketing Strategy to Varying Product Life Cycles," Business Horizons (Jan.-Feb. 1982); and Y. Wind, *Product Policy: Concepts, Methods and Strategy* (1982).

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all advertisers ultimately are interested in promoting their brands against competing brands.

As awareness of the product category spreads, advertising matters less and less in stimulating aggregate demand. In fact, demand flattens because few people remain who have not either (1) tried the product category and become settled users (or non-users) or (2) decided that they have no interest in trying the product category. Consumers no longer need advertising to appreciate the existence of telephones, gasoline, television, soft drinks, laundry detergent, toothpaste or mouthwash. These products have become a part of everyday life for those consumers who are likely to want them.

The aim and effect of advertising for such "mature" product categories is to promote, and to provide information on, particular brands of the product, not to promote the product category itself. Many studies have found that advertising in such markets -- including the cigarette market -- is not significantly related to aggregate product demand.[4]

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[4] For example, a 1976 survey of ten product categories identified four categories in which advertising and primary demand were related. But those four markets each were in the early stage of the product's "life cycle." Cigarettes were one of the remaining six product categories in which primary demand was found to be unrelated to advertising. J. Lambin, "Advertising, Competition, and Market Conduct," in *Oligopoly Over Time* (1976). *See also* Baltagi, B.H. and Levin, D., *Estimating Dynamic Demand for Cigarettes Using Panel Data*, Review of Economics and Statistics 68, 14-55 (1986); Ball & R. Agarwalda, "An Econometric Analysis of the Effects of Generic Advertising on the Demand for Tea in the UK," British Journal of Marketing, vol. 4 (1969); K. Palda, *The Measurement of*

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Thus, "denying product information to consumers (which effectively limits competition) . . . is unlikely to affect broad consumer demand patterns. . . Government policies which aim to reduce smoking prevalence by instituting advertising bans are therefore extremely unlikely to have any impact."[5]

There is an exception to this rule. Even after a product category has "matured" and advertising is no longer necessary to create awareness of the product, the product category may be in direct competition with other product categories. Electricity competes in some countries with natural gas. Milk competes with soft-drinks and other beverages. In such cases, it is not uncommon to see advertisements that promote a product category rather than a particular product brand. But cigarettes, like soap, are not

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[4](...continued)
Cumulative Advertising Effects (1964); L. Telser, "Advertising and Cigarettes," Journal of Political Economy, vol. 70 (1962). An excellent review of these and other studies may be found in D. Aaker & J. Carman, "Are you Overadvertising? A Review of Advertising-Sales Studies," Journal of Advertising Research, vol. 22, no. 4 (Aug.-Sept. 1982).

[5] Michael J. Waterson, "Advertising and Tobacco Consumption: An Analysis of the Two Major Aspects of the Debate," *International Journal of Advertising* 59, 71 (1991). Research has shown that consumption is much more directly related to levels of disposable income than to levels of advertising. R.C. Quarles and L.W. Jeffres, "Advertising and National Consumption," *Journal of Advertising* 12(2) 13 (1983). Masironi of WHO has noted that the richest countries generally have the highest per capita consumption of tobacco (above 2600 cigarettes per adult per year), while the poorest countries generally have the lowest per capita consumption of tobacco (below 1300 cigarettes per adult per year). Masironi, "Smoking Trends Worldwide," *Proceedings of the 7th World Conference on Tobacco and Health*, p. 269 (1991).

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in competition with other product categories, and one never sees an advertisement promoting cigarettes or soap as such. Instead, one sees only advertisements promoting particular brands of cigarettes or soap, and the companies that make these products use the criterion of increased sales of their brand, not increased sales in the category, when evaluating their advertising's effectiveness.[6]

Antismoking advocates have suggested that cigarettes are not a "mature" market so far as young people are concerned. This misunderstands what it means for a product category to be "mature." Every "mature" product category has first-time buyers. Consumers who never before purchased a home, a car, a television, a washing machine, laundry detergent or a cigarette will decide to do so. Young people necessarily are new to all of these markets as consumers. That does not mean that they lack awareness of the product category or attitudes toward the product category. Young people are aware of laundry detergent and cigarettes long before they reach maturity because older people around them use those products. Awareness of cigarettes is in fact so widespread that they are the very model of a "mature" product category.

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[6] *See, e.g.*, Magid Abraham and Leonard Lodish, *Advertising Works: A Study of Advertising Effectiveness and the Resulting Strategic and Tactical Implications* (Information Resources, Inc. 1989).

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B. The Primary Objectives of Advertising In "Mature" Product Markets

Even though advertising will not influence the absolute size of the market, the incentive to advertise particular brands of a mature product is substantial. The U.S. cigarette market had annual sales of about $45.2 billion in 1991, the market in Japan had sales of $26.2 billion in 1991 (at 1991 exchange rates), and Germany had sales of $19.44 billion (at 1991 exchange rates). Gaining a single market-share point thus meant garnering $452 million in U.S. sales, $262 million in Japanese sales, and $194 million in German sales. Equally important, preserving a single market-share point -- calculated on the basis of average retail price -- meant keeping nearly $452 million, $262 million or $194.4 million in sales. Moreover, as many as one out of every four U.S. smokers -- 25 percent -- may switch among brands in any given year.[7] In Japan, about 30 percent of smokers have switched brands in 1990 and 1991. Industry research for Brazil, Germany, Turkey and Malaysia also show a significant

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[7] Recent U.S. surveys indicate that more than 25 percent of all smokers may switch brands in the course of a year. A 1990 survey by the Roper Organization found that 77 percent of consumers who regularly buy cigarettes usually purchase the same brand. *Roper Reports* 90-2, question 58, page 39. This indicates that 23 percent switch brands each year. Indeed, only 54 percent of those surveyed stated that they would not try another brand if the store had run out of their own brand. *Id.* question 59, page 39. A 1989 survey of 2,000 consumers by Peter D. Hart Research Associates, cited by the Wall Street Journal in an article dated October 19, 1989, reported that 71 percent of smokers are "loyal to one brand." This indicates that 29 percent switch brands each year.

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proportion of switching -- between 8 and 19 percent. Even if relatively few smokers permanently switch brands each year, the amount spent per smoker to *prevent* brand switching -- that is, to encourage brand loyalty -- is relatively low.[8]

Successful brand promotion in a mature product market, however, must overcome two hurdles. First, the advertising must attract the viewer's attention. Second, and no less important, the advertising must distinguish the advertised brand from the multitude of other brands on the market. The long-term success of a brand depends on "building the * * * most sharply defined *personality* for [the] brand."[9] In short, both the advertisement itself and the advertised brand must stand out from the crowd.

Cigarette manufacturers face a unique set of limitations in this regard in their brand advertising. First is the sheer number of competing brands. In the United States, for

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[8] Those who consider cigarette advertising to be pervasive should bear in mind that the amount spent on cigarette advertising in the U.S., for example, accounts for less than 2 percent of all advertising expenditures. In 1989, for example, the cigarette industry ranked 15th in total spending for advertising and promotion in the U.S. -- behind food, toiletries, automobiles, drugs, candies/soft drinks and retail, to name a few. Advertising Age (Sept. 26, 1990), p. 8. Also, when comparing the size of expenditures to the extent of brand switching, it is important to note whether the particular statistics under study measure *net* effects or total switching; for example, 20% of Brand A smokers may switch to Brand B and 30% of Brand B smokers may switch to Brand A. The *net* switching would be measured as only 10%, when in reality, some 50% of smokers switched.

[9] Phillips, "Can 'Commodity Thinking' Kill Established Brands?", *Adweek*, Dec. 8, 1986 (emphasis in original).

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example, there are more than 350 cigarette brands and brand styles on the market.[10] There are 305 brands on the market in Germany and 265 brands in Japan. Second, the media to which cigarette advertising is restricted in many countries -- the print media -- are relatively inefficient vehicles for advertising. Third, advertisements for cigarettes in the print media draw even *less* attention than print media advertisements for other product categories. As Young & Moschis have observed:

> "It is generally acknowledged that in a typical magazine environment an 'average' advertisement receives approximately three seconds of viewing time * * *. Cigarette advertisements receive the least amount of viewing time of any major print advertising category. This is because the typical cigarette advertisement is a quintessential 'reminder' advertisement -- it grabs your attention, you see the picture and you go on to the next page. It is extremely rare for a cigarette advertisement to hold a viewer's attention for more than a couple of seconds."[11]

(1) <u>Attracting Viewer Attention</u>

Advertisers typically use attractive models in attractive settings to promote their products. Attractive men and women are used to sell brands of everything from floor polish to toothpaste. In using attractive models in attrac-

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[10] *New York Times*, Jan. 12, 1989, at D5.

[11] Young & Moschis, "Review of Eye Tracking and Recall Study of Adolescents Viewing Tobacco Advertisements," pp. 9-10 (Jan. 1989) (unpublished manuscript).

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tive settings, advertisers are not attempting to persuade consumers that scrubbing floors or gargling is attractive. The goal is to catch the viewer's attention for the advertised brand.

Consumers are exposed to countless advertisements each day in a variety of media. On television, as many as 20 minutes of each broadcast hour may be consumed by commercials, and advertisements account for more pages than text in most newspapers and magazines. The result is "commercial clutter." As one advertising executive has stated:

> "Hardly anyone in the advertising business would disagree that clutter is a problem. As consumers are bombarded by more and more advertising messages, it becomes more and more difficult for advertising messages to get through."[12]

U.S. research shows that "about 13% of magazine ads are totally missed by the reader, largely because of ad clutter," and that "readers are totally ignoring 40% of advertised

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[12] Miller, "No Escaping Ads -- Response to Clutter: More Clutter," Advertising Age (Dec. 11, 1989), p. 34. *See* M. Schudson, *Advertising, The Uneasy Persuasion: Its Dubious Impact on American Society* 107-08 (1984); M. Ray & P. Webb, "Experimental Research on the Effects of Television Clutter: Dealing with a Difficult Media Environment," in Marketing Science Institute, Research Report # 76-102 (1976); P. Webb, "Consumer Initial Processing in Difficult Media Environment," Journal of Consumer Research, vol. 6, no. 4 (1979); P. Webb & M. Ray, "Effects of TV Clutter," Journal of Advertising Research," vol. 9 no. 3 (1970); and C. Cobb, "Television Clutter and Advertising Effectiveness," in American Marketing Association Proceedings (1985).

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names."[13] It also has been reported that "[s]ome 85% of magazine readers do not remember seeing the average advertisement."[14] According to George Gallup, two advertised products in the same commodity group, using the same size space, can differ by as much as 12 to 1 in their ability to command attention and register the product's brand name.[15]

Numerous studies demonstrate that various measures of advertising effectiveness -- such as recall and positive attitudes -- decrease as the amount of "clutter" increases in the media environment. Viewer attention is a limited resource, and advertisers compete intensely for it. The ability to gain consumer attention, other things being equal, often is weakest in "mature" product markets because consumers are so familiar with the advertised product. Thus, advertising expenditures often must be higher in mature markets than in "new" or emerging markets if advertising is to achieve the same level of attention.[16] Every advertiser therefore

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[13] *See* "Eye-Tracking Research Bolsters Claims of Bus Shelter Advertising Effectiveness", Marketing News (Oct. 28, 1983), p. 8; Alter, "Research on Eye Movement Shows Editorial Environment Does Affect Ad Readership," Magazine Age (Oct. 1982), p. 42.

[14] Ogilvy & Raphaelson, "Research Advertising Techniques that Work -- and Don't Work," Harvard Business Review, July-Aug. 1982, p. 14.

[15] Gallup, "How Advertising Works," 23 J. Advertising Res. 76, 78 (1983).

[16] *See, e.g., Newsday*, Dec. 11, 1989, p. 4 (the manufacturer of new household cleaner must have "a major, continuous program [simply] to convince the consumer his product exists").

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seeks the most effective means available to get a message noticed, for he reaps the reward of a viewer's momentary focus and a chance to "speak" to the viewer.[17]

(2) Audience Segmentation

Broadly speaking, an advertiser in a "mature" product market can promote a particular brand in either of two ways. He can point to objective characteristics of the brand that make that brand superior to other brands, or he can identify the brand subjectively as the brand that is desirable.[18]

There are many product categories in which an advertiser can point to objective characteristics of a brand that distinguish it from competing brands. One make of automobile may have better mileage or require fewer repairs than another, and of course automobiles vary dramatically in price.

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[17] *See* "Images That Created Impressions: Their Strength Is in Boldness," *Newsday*, Dec. 18, 1989, p. 5; "Visibility for the Invisible," *Adweek*, Dec. 18, 1989, p. 7 (ads for Infiniti model "were very aggressive, in that they cut through the clutter and made Infiniti stand out from the crowd").

[18] The prevalence of market segmentation in marketing practices is reflected in P. Kotler, *Marketing Management: Analysis, Planning and Control* (5th ed. 1984); J. Engel, H. Fiorillo & M. Cayley, *Market Segmentation: Concepts and Applications* (1972); D. Yankelovich, "New Criteria for Market Segmentation," Harvard Business Review (March-April 1964); J. Plummer, "Life Style Patterns: New Constraint for Mass Communication Research," Journal of Broadcasting (Winter 1971-72); W. Smith, "Product Differentiation and Market Segmentation as Alternative Marketing Strategies," Journal of Marketing (July 1956); and A. Roberts, "Applying the Strategy of Market Segmentation," Business Horizons (Fall 1961).

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Similarly, laboratory studies may in fact show that some antacids work faster and more effectively than others. Cigarette advertisements also can point to the "tar" and nicotine rating of a particular brand, its type of filter, taste or length. When such objective characteristics allow an advertiser to distinguish its brand from others, the advertiser is likely to stress those characteristics in the advertising.

In many cases, however, brands are more or less interchangeable in "objective" terms. Some cigarette brands, like some soft drinks and soaps, are more difficult to distinguish from one another on the basis of objective characteristics than are other brands. An advertiser attempting to promote a brand that is less readily distinguishable from other brands therefore tries a different approach. The advertiser aims to promote his brand with particular groups of consumers within the product category by saying, in effect, "If you are this kind of consumer, Brand X is for you; if you are that kind of consumer, Brand Y is for you." The advertiser, in other words, chooses a particular group of consumers within the product category at which to direct his message and tailors his message in a way that is more likely to strike a responsive chord with that group. Thus, it is not the advertisement that "shapes" the consumer; it is the consumer (those in the audience who already use the product category) that "shapes" the advertisement.

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This is the principle of audience segmentation. Regardless of the product, individuals tend to cluster in "taste cultures." It is to these groupings that advertisers direct their messages -- particularly in mature product categories in which objective differentiation of the constituent product brands is difficult. Advertisers no longer treat the public as an undifferentiated mass. That approach is not cost-effective, and it is particularly inefficient when many interchangeable brands of a product are competing for a share of the market. This is simply a fact of effective marketing, which indicates nothing in itself about whether advertising increases total consumption of a particular product.

All advertising seeks to portray the brand being advertised in a "positive" manner, and cigarette advertising is no different in this regard. Not surprisingly, people in cigarette advertisements often appear to be enjoying themselves and taking pleasure in smoking. This cannot be considered misleading. Similarly, many cigarette advertisements depict attractive people, but that is about the only generalization that one can make. Sometimes the people portrayed are confirmed individualists; sometimes they are emphatically sociable creatures. The various cigarette manufacturers, like advertisers of soaps and colognes, attempt to attract the attention of each of these audiences. In addressing their advertising to particular audiences, and in

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seeking to gain their attention and preference, cigarette manufacturers are doing exactly what other advertisers do -- and must do -- to engage in brand competition.

(3) Consumer Response to Advertising

Proponents of a ban on cigarette advertising overestimate the power of advertising -- in part by underestimating the intelligence and free will of the audiences to whom it is directed. Although this view of consumers is one that prevailed in advertising theory earlier in this century, it has since been discredited. Consumers, young and old alike, are far more sophisticated and discriminating in their responses to advertising than was once believed.

Once it was thought that advertising had a direct and powerful effect on consumers. Advertisers would say, "Buy Brand X because it is superior to Brand Y," and if the advertisement was clever enough, the consumer would buy the advertised brand. In reality, the world does not and never did operate in the way described by this "one-way flow" model. Advertisers soon realized that simply disseminating a commercial message did not ensure it would be noticed. They also learned that, even when noticed, commercial messages were not necessarily retained, and that even when viewers found a particular advertisement memorable, they did not always remember

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what brand was being advertised.[19] Moreover, even when consumers did remember an advertisement, as well as the name of the advertised brand, there was no guarantee that they would have any interest in buying the brand or even a product within the product category. The failure of consumers to provide a Pavlovian response stems from the fact that people are not hapless recipients of advertising. Rather, when they do notice advertising, they are active participants who ignore, selectively attend to, laugh, counter-argue, forget or say "no" to it.[20] Individual audience members are the sum of myriad experiences and beliefs who evaluate commercial messages not in a vacuum but in the context of their lives.[21]

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[19] These points are discussed in M. Ray, *Advertising and Communication Management* (1982). Other discussions of early models of advertising and promotion effects include W. Schramm, "Channels and Audiences," in *Handbook of Communication* (I. depool *et al.* eds. 1973); H. Laswell, "The Structure and Function of Communication in Society," in *Communication of Ideas* (L. Bryson ed. 1948); R. Bauer & A. Bauer, "America, Mass Society and Mass Media," Journal of Social Issues, vol. 16 (1960); R. Bauer, "The Initiative of the Audience," Journal of Advertising Research, vol. 3, no. 2, (1963); and T. Robertson, J. Zielinski & S. Ward, *Consumer Behavior* (1984).

[20] R. Bauer, "The Initiative of the Audience," Journal of Advertising Research, vol. 3, no. 2 (1963).

[21] Contemporary models of marketing communication are found in advertising text and trade books, such as those cited above. *See also* M. Ray, "Marketing Communication and the Hierarchy of Effects," in New Models for Mass Communication Research (P. Clark ed. 1973); and W. McGuire, "An Information Processing Model of Advertising Effectiveness," in *Behavioral and Management Sciences in Marketing* (H. Davis & A. Silk eds. 1978).

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Counter-arguments are a pervasive part of the exchange between advertiser and consumer. One may resist the most appealing advertisement for a fast-food chain because one is on a diet or does not like "junk" food. One may resist a clever advertisement for a foreign automobile because one believes that domestic-made cars are more reliable or because one is pleased with the performance of one's own car. One may decide against chewing gum -- despite the attractive, happy people who inhabit gum advertisements -- because one thinks that chewing gum is annoying. This kind of counter-argument goes on all the time, most often in the form of an internalized debate.

What is distinctive about the counter-argumentation that occurs in the case of cigarettes is that no viewer can possibly avoid the counter-argument. The antitobacco point of view is one of the most widely disseminated consumer messages in the world. Indeed, cigarette advertising in most countries carries health warnings. In those countries, every cigarette advertisement is a reminder of the smoking and health controversy, containing its own counter-argument.

Despite the pervasiveness of advertising, it lacks the persuasive impact on the consuming public that some would ascribe to it. Indeed, advertising is so pervasive precisely because the persuasive impact is so limited. Advertisers must advertise if they are to retain the brand loyalty of their own consumers and, perhaps, attract consumers away from competing

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brands. And, particularly in the case of mature products, advertisers must compete aggressively to be heard through the commercial clutter. Even if the advertiser manages to catch the momentary attention of a consumer, he always risks rejection of his message by the consumer's own internal counter-argument.

Conclusion

Proposals to ban or restrict advertising therefore both *overestimate* the power of advertising and *underestimate* the sophistication of consumers. Because such proposals are based on flawed assumptions, advertising bans and content controls will not have the effect proponents claim.

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CIGARETTE ADVERTISING AND "TARGETING"

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CIGARETTE ADVERTISING AND "TARGETING"

- Proponents of tobacco advertising bans claim that cigarette advertising is improperly "targeted" at racial minorities women and Third World populations.
- The "targeting" claim assumes that women, racial minorities and people of less-developed nations are incapable of making their own decisions and need to be "protected" by government censorship.
- Not only is this attitude patronizing and paternalistic, it is not supported by data.

Less-developed countries

- Studies show that advertising restrictions had little if any effect on the level of cigarette consumption in less-developed countries. Factors such as urbanization, education and aging were found to be much more relevant.

Women

- Cigarette advertising and promotion are not responsible for smoking among women, despite claims to the contrary.
- Smoking among women has been increasing in a number of countries where cigarette advertising is banned, yet decreasing in a number of countries where advertising is permitted.
- In many countries where it is increasing, this is part of a general disintegration of sex-based stereotypes. As more and more women enter the workforce, the traditional family structures and consumption patterns are changing.
- Trends in cigarette consumption are only one example of general disintegration of sex-based consumption patterns. Advertising reflects this, but is not responsible for it.
- Manufacturers of many products, as well as service industries, have recognized this shift. And, being astute businesses, they have begun to market to women. Yet, no one suggests that women are using these products or services because they are being "targeted" by advertisers. Advertising followed the market.

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Minorities

- The claim that African-Americans are particularly "vulnerable" to cigarette advertising in the U.S. is not supported by data.
- Even the U.S. Secretary of Health and Human Services and the Surgeon General state that black smokers tend to start smoking at an older age than white smokers, that blacks smoke fewer cigarettes per day, and that smoking among blacks overall has been declining at about the same rate as among whites in recent years, and in some instances, was declining at a faster rate.
- Available studies indicate that patterns and trends in smoking among U.S. Hispanics do not suggest a particular "vulnerability" to cigarette advertising, as claimed by antitobacco activists.
- In fact, a Centers for Disease Control survey stated that the overall prevalence of smoking was lower among Hispanics than among non-Hispanics.
- Belief that U.S. minorities are peculiarly susceptible to cigarette advertising is not supported by data; it reflects a basic misunderstanding of advertising.

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CIGARETTE ADVERTISING AND "TARGETING

- Proponents of tobacco advertising bans claim that cigarette advertising is improperly "targeted" at some segments of the population, i.e., racial minorities, women and Third World populations.

- Assumption appears to be that women, racial minorities and people of less-developed nations are less capable of acting in their own best interests and, therefore, need to be "protected" by government censorship.

- Less-developed countries (LDCs):

  - Dr. Eugene Lewit (New Jersey Medical School's National Bureau of Economic Research): "Evidence from a sample of LDCs suggests that the existence of advertising restrictions per se had little if any effect in trends or on the level of cigarette consumption."

  - Each country shows its own pattern of consumption and reasons why certain groups smoke, e.g., "urbanization" is pinpointed as a "cause" of women smoking in Africa; urbanization, aging, education and employment are thought to cause more women to smoke in Latin America.

- Cigarette advertising and promotion are not responsible for smoking among women, despite claims to the contrary.

  - Smoking among women has been increasing in a number of countries where cigarette advertising is banned, yet decreasing in a number of countries where advertising is permitted.

  - Where smoking has increased among women, it has been part of a general disintegration of sex-based stereotypes.

- In non-ban countries Canada, United Kingdom, The Netherlands, Denmark, Hong Kong and the United States, smoking incidence among women of most age groups has declined over the past several decades.

- In ban and near-ban countries Finland, Norway and Singapore, smoking incidence among women of most age groups has increased since imposition of the bans.

The Convergence of Male/Female Consumption Patterns

- Trends in cigarette consumption are only one example of general disintegration of sex-based consumption patterns. Advertising reflects this, but is not responsible for it.

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- As women have entered the workforce in record numbers around the world, it has altered traditional family structures and consumption of consumer products.

- Manufacturers of cars, electronic equipment and appliances, financial services companies, hotels and airlines have begun to solicit women for business. No one suggests that women are buying more cars, using credit cards more frequently or going out of town on business because they are being "targeted" by advertisers. Advertising followed the market.

- "... far from being a moulder of society, [advertising] appears, for the most part, simply to reflect those attitudes and norms which prevail in a society at any given time." (John Jenkins, Tobacco Advertising and Children: Some Canadian Findings (1988)).

Cigarette Advertising and U.S. Racial Minorities

- The hypothesis that African-Americans are particularly "vulnerable" to cigarette advertising in the U.S. is not supported by data of the U.S. Secretary of Health and Human Services and the Surgeon General:

  - black smokers tend to start smoking at an older age than white smokers.

  - black smokers smoke fewer cigarettes per day.

  - heavy smoking has been consistently more common among whites compared with blacks.

  - smoking among blacks overall has been declining at about the same rate as among whites in recent years, and in some instances, was declining at a faster rate.

- Patterns and trends in smoking among U.S. Hispanics do not suggest that Hispanics are "vulnerable" to cigarette advertising:

  - Center for Science in the Public Interest: based on several surveys, Hispanic women tend to smoke considerably less than blacks or whites; Hispanic men, about the same rate as other men.

  - Rogers & Crank study: Hispanic males are as likely to smoke as anglo males, but consumer fewer cigarettes. Hispanic females seldom smoke compared to anglo females. ("Ethnic Differences in Smoking Patterns: Findings from NHIS 1988).

  - Centers for Disease Control 1988 survey: overall prevalence of smoking was lower among Hispanics than among non-Hispanics.

- Belief that U.S. minorities are peculiarly susceptible to cigarette advertising is not supported by data; it reflects a basic misunderstanding of advertising.

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CIGARETTE ADVERTISING AND "TARGETING"

"It is more accurate to observe that cigarette smoking among women led tobacco companies to advertise to the 'female market' than to suggest that advertising created the market in the first place."

Prof. Michael Schudson
University of California[1]

Proposals to ban tobacco advertising strike many as unacceptably paternalistic, reflecting the assumption that "the average consumer * * * is deficient or incapable of judgment with regard to such advertising."[2] This assumption proved to be offensive to many educated, primarily male policy makers. These policymakers recoiled at the suggestion that they -- or consumers generally -- are so easily manipulable.

As a result, proponents of tobacco advertising bans recast their arguments, claiming that some *segments* of the population (not the educated policymaking elites) are manipulable and that these groups need to be "protected" from tobacco advertising. In the U.S., these supposedly vulnerable groups include racial minorities and women, among others. Some have suggested that women in Asian countries, and the populations of less-developed countries generally, likewise

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[1] M. Schudson, *Advertising, The Uneasy Persuasion: Its Dubious Impact on American Society* 183 (1986).

[2] *RJR-MacDonald Inc. v. Attorney General of Canada*, 82 D.L.R.(4th) 449, 510 (1991).

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are peculiarly susceptible to manipulation by tobacco advertising. It is alleged that cigarette advertising is improperly "targeted" at these groups.

Cigarette advertising is "targeted" at adult smokers. But smokers, like consumers of other products, are not an undifferentiated mass. All sorts of people are smokers. Cigarette manufacturers, like manufacturers in other highly competitive markets, tailor their brand messages to those who consume their products. This is essential to the task of distinguishing the advertised brand from the multitude of other brands on the market. A frequent advertising objective is to maintain "share of mind," that is, relative awareness of the advertised brand vis-a-vis competitors among the core of satisfied users of a product.[3] The traits of that core group may be defined geographically, demographically or, as is increasingly common, "psychographically" -- according to the group's values and lifestyles.[4]

No one ever has accused a cigarette manufacturer of improperly "targeting" white male yuppies -- even though advertising for some cigarette brands features models who fit

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[3] James F. Engel, Martin R. Warshaw and Thomas C. Kinnear, *Promotional Strategy: Managing the Marketing Communications Process* 139 (1983).

[4] *Id.* at 128-141; *see also* Art Weinstein, *Market Segmentation* (1987); Louis W. Stern and Adel I. El-Ansary, *Marketing Channels* 65-67 (3d ed. 1988) (listing the typology developed in SRI International's Values and Lifestyles approach).

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that description. The assumption seems to be that women, racial minorities and the people of less-developed countries are less capable than affluent white males to determine and act in their own best interests and must be "protected" by government censorship.

Even highly educated women in the Third World apparently need such "protection." Thus, reviewing smoking prevalence in Latin America, the U.S. Surgeon General has noted that "[d]ata from selected sources indicate that smoking is more prevalent among highly educated women than among less-educated women."[5] Unable to accept the possibility that women enlightened by formal education legitimately might choose to smoke, the Surgeon General hypothesized that higher education may make Latin American women less capable of discerning their own self-interests! Higher education, the Surgeon General suggested, actually may impart to Latin American women "greater susceptibility to messages that promote positive associations with smoking."[6]

Assumptions such as this are both patronizing and demonstrably incorrect. Commenting on the similar claims concerning minority "targeting" in the U.S., Dr. Benjamin L.

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[5] *Smoking and Health in the Americas: A 1992 Report of the U.S. Surgeon General, in collaboration with the Pan American Health Organization*, p. iv (1992) ("1992 Surgeon General's Report").

[6] *Ibid.*

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Hooks, Executive Director of the National Association for the Advancement of Colored People, had this to say:

> "Charges have been made that [the cigarette] companies are specifically targeting minority communities because they offer a tempting target and are most likely to be persuaded by the advertiser's message than the majority community.
>
> Implicit in this is the premise that Blacks are so naive they will be persuaded to smoke by a billboard or an ad. Buried in this line of thinking, and never really mentioned by these critics, is the rationale that Blacks are not capable of making their own free choices and need some guardian angels to protect their best interests.
>
> This is an insidious form of paternalism. Blacks, like the rest of the populace, can make the choice of whether to smoke or not."[7]

A. Cigarette Advertising in Less Developed Countries

In a 1988 paper, Dr. Eugene M. Lewit of the New Jersey Medical School's National Bureau of Economic Research considered the effects of advertising restrictions in less developed countries ("LDC's"). According to Dr. Lewit, "[e]vidence from a sample of LDC's suggests that the existence of advertising restrictions per se had little if any effect in trends in or on the level of cigarette consumption.[8] This is

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[7] Hooks, "What About Individual Choice?, *Michigan Chronicle*, Dec. 16, 1989.

[8] Lewit, "Tobacco in Developing Countries," p. 45 (Harvard Institute for the Study of Smoking Behavior and Policy, Discussion Paper Series, March 1988).

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consistent with the suggestion of the U.S. Surgeon General that smoking prevalence, at least in Latin America, may be viewed as a function of economic development:

> "Countries that are furthest along the path of industrialization have gone through a period of high smoking prevalence and are now experiencing * * * declining prevalence * * *. Other countries, substantially along the path, are entering a period of high prevalence * * *. Still others, less developed industrially, have low prevalences of smoking * * *."[9]

As each country has a unique culture, so too each shows its own pattern of consumption and unique reasons why certain groups choose to smoke more than others. Thus, urbanization is pinpointed as a "cause" of women smoking in Africa; urbanization, aging, education and employment are thought to cause more women to smoke in Latin America. By contrast, in India, far more women smoke in rural areas than in urban areas.[10]

It should be borne in mind that per capita cigarette consumption in the Third World (excluding China) has declined more than 10 percent in the last decade, from 590 cigarettes per person per year in 1981 to just over 540 cigarettes per person per year in 1990. Although the decline in the OECD countries from 1981 to 1990 was steeper (16 percent), it was

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[9] *1992 Surgeon General's Report*, *supra*, p. iii.

[10] Claire Chollat-Traquet, *Women and Tobacco* 21-3, 25, 72 (World Health Organization 1992).

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starting from a considerably higher base -- approximately 2,250 cigarettes per person per year. This decrease in cigarette consumption in the Third World has taken place against a strong contrary trend of consumption patterns for other consumer, packaged, non-essential items (e.g., soft drinks).[11]

B. Cigarette Advertising and Women

Cigarette manufacturers recognize that women smoke. Naturally, they attempt to attract as many women smokers as possible to their brands, yet most women do not smoke brands tailored specifically to women smokers as a discrete segment of the market. In fact, women are more likely to smoke brands associated with a "male" image than so-called women's brands.

Cigarette advertising and promotion are not responsible for smoking among women, despite oft-repeated claims to the contrary.[12]

First, smoking among women has been increasing in a number of countries where cigarette advertising is banned. Meanwhile, smoking by women has been decreasing in a number of countries where cigarette advertising is permitted -- particularly in the U.S. If cigarette advertising were responsible for smoking among women, the reverse would be

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[11] U.S. Cigarette Export Association, "Worldwide Decline in Smoking," March 16, 1992.

[12] Tobacco Use in America Conference, *Final Report* 30 (Jan. 1989).

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true. These data are consistent with the overall evidence and, once again, support the conclusion that advertising does not make people start smoking or keep them from stopping.

Second, in countries where smoking among women has increased, that increase has been part of a general disintegration of sex-based stereotypes and consumption patterns over the past 20 years. Women and men today are purchasing many products that used to be favored by the opposite sex. Advertisers, including cigarette manufacturers, simply respond to these shifting consumption patterns. In North America, for example, women began smoking in large numbers *before* any advertising was tailored to women smokers.[13]

If cigarette advertising and promotion were responsible for smoking among women, one would expect to find increases in smoking among women where advertising and promotion are permitted and decreases in smoking among women where advertising and promotion are prohibited. The facts confound that hypothesis.

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[13] Timothy E. Moore, *Antecedents of Smoking Onset in Children and Adolescents: A Review*, Department of Psychology, Glendon College, York University, Toronto Canada (April 2, 1987), pp. 30-31; Schudson, *supra* note 1.

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(1) Non-Ban Countries

Canada. Between 1970 and 1985, before Canada banned tobacco advertising, the incidence of smoking among women (all ages) declined from 32.4 percent to 27.8 percent.[14]

United Kingdom. Between 1974 and 1986, smoking among women ages 20 and older declined from 41 percent to 31 percent.[15]

The Netherlands. Between 1967 and 1985, the incidence of smoking among women (all ages) declined from 42 percent to 34 percent.[16]

Denmark. Between 1975 and 1987, the incidence of smoking among women declined significantly in most age groups -- from 39.7 percent to 24.4 percent among women ages 15-19, from 55.8 to 42.2 percent among women ages 20-24, and from 49 to 39.8 percent among women ages 40-49.[17]

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[14] Government statistics compiled by Professor Jean J. Boddewyn, Evidentiary Submission to the Legislative Committee of the House of Commons Considering Bill C-51, Table 1, p. 4 (1989).

[15] Pierce, "International comparisons of trends in cigarette smoking prevalence," Am. J. Pub. Health, Feb. 1989, p. 152.

[16] B. Baan, "The Dutch Non-Smoking Approach," *Smoking and Health 1987*, p. 785 (eds. M. Aoki, S. Hisamichi & S. Tominaga 1987). *See also* J. van Reek, "Smoking Behaviour in The Netherlands from 1958 to 1982," *Proceedings of the 5th World Conference on Smoking and Health*, vol. 1, p. 790 (1983).

[17] P. Neilsen, J. Zacho, J. Olsen & C. Olsen, "Aendringer i danskernes rygevaner 1970-1987," Ugeskr Laeger 150/36 - 19 September 1988 - Videnskab og praksis, Table 4, p. 2231. The incidence of smoking among women ages 25-40 remained stable during this period.

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Hong Kong. Between 1982 and 1990, smoking among women of all ages decreased from 5.6% to 2.6%.[18]

United States. Between 1965 and 1987, the incidence of smoking among women (aged 20 years and older) declined significantly. Virtually all of that decline occurred between 1977 and 1987.[19] Yet, no significant additional advertising restrictions were imposed after 1977.

(2) Ban and Near-Ban Countries

Finland. In Finland, cigarette advertising was completely banned in 1978. In the decade following the ban, an increase in smoking among women occurred across the board. Between 1980 and 1987, smoking among women (all ages) increased from 15.6 percent in 1980 to 18.5 percent in 1987. Smoking among women ages 15-24 increased from 18.6 percent to 20.5 percent; smoking among women ages 25-44 increased from 17.2 percent to 23.0 percent; and smoking among women ages 45-64 increased from 11.3 percent to 11.7 percent.[20] By 1989, 20% of the women in Finland were smokers.[21] A further study

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[18] Special Topics Report No. VII, Social Data Collected by the General Household Survey (Hong Kong), Topic F (July 1990).

[19] *Report of the Surgeon General: Reducing the Health Consequences of Smoking*, pp. 269-70 (1989).

[20] R. Kurkela, Tupakka tupakkalain jälkeen, p. 19 (1987).

[21] Claire Chollat-Traquet, *Women and Tobacco* 13-14 (World Health Organization, 1992).

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shows a continued increase in smoking among women in Finland between 1988 and 1990.[22]

Norway. In Norway, cigarette advertising was completely banned in 1975. Between 1976 and 1987, smoking among adult women increased from 38 percent to approximately 43 percent.[23] Another report cites a more gradual upward trend between 1977 and 1989.[24]

Sweden. In Sweden, cigarette advertising was severely restricted in 1979. Yet smoking was more prevalent among women aged 35-55 and 65-74 in 1986 than in 1977.[25] While smoking reportedly was less prevalent among women aged 16-34 and 55-64 in 1986 than in 1977,[26] the prevalence of smoking among 16-year-old girls has been increasing since 1984 and the use of smokeless tobacco among Swedish adolescents of both sexes in the last several years "has increased heavily."[27]

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[22] M. Paavola, J. Tikkanen, A. Heloma & K. Koskela, "Research on Attitudes Toward Smoking in Finland," Suomen Lääkärilehti, p. 721, August 1991.

[23] H. Thurmer, K. Bjartveit & A. Haukness, "Smoking among Norwegian Doctors," *Smoking Behaviour and Health 1987*, p. 699 (eds. M. Aoki, S. Hisamichi & S. Tominaga 1987).

[24] T. Sanner et al., "Action Plan 'Smoke-Free Norway Year 2000,'" *Proceedings of the 7th World Conference on Tobacco and Health*, p. 317 (Perth, 1991).

[25] National Board of Health and Welfare, *Tobacco Control in Sweden* 2 (1987) (National Bureau of Statistics).

[26] *Ibid.*

[27] *Id.* at 7.

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Singapore. In Singapore, cigarette advertising was banned in 1970. Between 1987 and 1991, the proportion of women who smoked regularly rose from 0.1 percent in 1987 to 0.7 percent in 1991, the proportion of those between 20 and 29 rose from 0.7 percent to 1.4 percent, and the proportion of those between 60 and 64 increased from 5.3 percent to 7.3 percent.[28]

(3) The Convergence of Male/Female Consumption Patterns

Because antismokers focus only on smoking, they overlook a basic fact: Across a broad spectrum of products, more women are purchasing products traditionally characterized or seen as "male" products and, conversely, more men are purchasing traditionally "female" products. Trends in cigarette consumption -- for example, in the U.S. and Latin America, smoking prevalence among men and women appears to be converging[29] -- are only one example in this general disintegration of sex-based consumption patterns. This is a social phenomenon that advertising reflects, but for which it is not responsible.

These shifts are seen throughout history as societal structures and mores change. For example, tobacco use

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[28] "More Smoking Despite Campaign," The Sunday Times, May 24, 1992, p.3.

[29] *See 1992 Surgeon General's Report, supra*, at 68 (comparing male-to-female ratio of smoking prevalence in seven Latin American counties, 1971 and 1988).

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apparently was common in the seventeenth century among both women and men in Korea and Japan; in Korea, this persisted through the nineteenth century. However, by the twentieth century, it was primarily men who used tobacco. Similar patterns have been observed for some different cultural groups in Africa.[30]

From contemporary surveys of women and men regarding tobacco use, it has been concluded that "[p]robably the most important feature of sex roles that has contributed to gender differences in tobacco use has been men's greater power and access to scarce resources in many societies. * * * [G]ender differences in power are reflected in greater restrictions on women's behavior, including widespread social proscriptions against women's smoking, and this social disapproval of women's smoking has been a major cause of gender differences in smoking."[31]

Over the past 30 years, the role of women in a number of countries broadened dramatically. Women began to enter the workforce in record numbers. The incidence of divorce also rose, resulting in many more female-headed

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[30] Ingrid Waldron, et al., *Gender Differences in Tobacco Use in Africa, Asia, the Pacific and Latin America*, Social Science and Medicine 27 (11), 1269 - 75 (1988).

[31] *Id.* at 1272.

Source: https://www.industrydocuments.ucsf.edu/docs/ryhl0000

families.[32] Women increasingly decided to delay or even forego childbearing. These trends have been well-documented for the 1980s and as predicted, continue to alter these societies in the 1990s.[33]

In Japan, for example, women have entered the labor force at a faster rate than men since the late 1970s. Almost half of all Japanese women currently hold jobs outside the home. Women in Japan accounted for more than 40 percent of the entire labor force by 1988. The number of women in managerial positions increased 50 percent between 1982 and 1987.[34] The social consequences of this transformation have been enormous. "This shift has effectively destroyed the traditional belief that men work and women stay home and do the wash."[35]

In South Korea, the proportion of women who work has risen 45 percent -- high for an industrial country -- while the proportion of men at work has fallen.[36] In Hong Kong, the average median income of females has increased nearly

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[32] Marketing Communications, vol. 11, no. 10, p. 25 (Nov. 1986); Advertising Age, vol. 57, no. 20, p. 26 (Mar. 13, 1986).

[33] American Demographics, vol. 10, no. 11, pp. 22-26 (Nov. 1988); American Demographics, vol. 8, no. 8, pp. 22-25 (Aug. 1986).

[34] "Japan Discover Woman Power," Fortune (June 19, 1989).

[35] "Women Get on the Job," Look Japan (Sept. 1990), p. 8.

[36] The Economist, Vol. 311, No. 7598 (April 15, 1989).

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sevenfold.[37] Similarly, the success story of Singapore women in the workforce mirrors the economy's success. In 1970, for example, only 54 percent of women aged 20-24 were in the labor force, but the percentage jumped to 78 percent by 1980 and 81 percent in 1988.[38] In Taiwan, women now comprise 45 percent of the workforce in manufacturing.[39]

As a result of these trends, Asian women have gained greater independence, and a proportionally much higher rise in their income than for the population as a whole. Not coincidentally, consumer spending patterns for Asian women have changed more noticeably than for other social groups.[40]

As women have moved into the workplace, and as traditional family structures have disintegrated, classical sex-stereotyped consumption patterns also have eroded. In discussing consumer products and sex roles, two U.S. experts observed in 1983:

> "Within every society, it is quite common to find products that are either exclusively or strongly associated with the members of one sex. In the United States, for example, shaving equipment, cigars, pants, ties, and work clothing were historically male products; whereas

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[37] "The Asian Consumer," Business Asia: Special Issue (Oct. 22, 1990).

[38] "Battle of the Sexes," Far Eastern Economic Review (Aug. 31, 1989), p. 34.

[39] Far Eastern Economic Review (May 17, 1990).

[40] "*The Westernization of the Asian Consumer*," Business International Report, August 26, 1991, at 1.

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> bracelets, hair spray, hair driers, and sweet-smelling colognes were generally considered to be feminine products. For most of these products, the sex link has either diminished or disappeared * * *."[41]

This transformation has been in both directions. In 1970, women bought 23 percent of the new cars sold in the U.S. In 1987, they bought 45 percent of the new cars sold.[42] As a result, "Detroit has recognized women."[43] With U.S. women now spending upwards of $30 billion a year on new car purchases, automobile manufacturers "are now recognizing women as a valued target market."[44] *The Economist* reports that in South Korea, car makers expect to sell more than 700,000 new cars, many to women who are doing social driving for the first time.[45] Indeed, women now represent the fastest growing segment of car buyers. Ford Motor Company is now promoting even its tractors with women,[46] while in Japan women now

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[41] L. Schiffman & L. Kanuk, *Consumer Behaviour*, p. 443 (2d ed. 1983).

[42] American Demographics, No. 1988, p. 29.

[43] Marketing Communications, vol. 10, no. 11, p. 100 (Dec. 1985).

[44] *Ibid.*

[45] The Economist (Apr. 15, 1989).

[46] Advertising Age (Feb. 27, 1984), p. 57.

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drive dump trucks at construction sites and operate machinery at machine shops.[47]

Not surprisingly, in Japan, "it is single women in their early 20s who are driving Japan's retail revolution. * * * Their mothers scrimped and saved for decades. Not for us, say the daughters. Their favorite pastime is shopping -- anywhere."[48] Ray Ban has pinned its hope of selling sunglasses in Japan -- where sunglasses have been considered socially unacceptable -- on women,[49] and companies like Matsushita Electric have begun to design and market products like television sets and other appliances to appeal especially to young, single women.[50] In Hong Kong, Asian business consultants warn manufacturers not to overlook the influence of women on the purchase of big ticket items like cars, TV's and VCRs.[51]

Meanwhile, as women have entered the labor force in large numbers, financial services companies have begun to compete fiercely to sell women credit cards, brokerage ser-

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47 "Japan's New Woman," Newsweek (Jan. 15, 1990), pp. 16, 19.

48 "Japan's Consumer Boom," The Economist (Sept. 9, 1989), p. 21.

49 "Ray-Ban Eyes the Ladies," Advertising Age, June 22, 1992.

50 "Japan's New Woman" at 20.

51 "The Asian Consumer" at 364.

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vices and other products.[52] In Japan alone, 64.3% of young working women own a bank card.[53] Hotels and airlines have begun to solicit women travelers.[54] Yet no one seriously suggests that it is because advertisers "targeted" them that women are buying a greater proportion of new cars, or increasingly are using credit cards or other financial services or going out of town on business trips. Rather, the advertising followed the market.

Similarly, "men now make numerous purchasing decisions that were once considered women's domain."[55] From being next to nothing 15 years ago, men's fragrance and toiletries now account for $1.7 billion in sales in the U.S.[56] Men are becoming a significant factor in food marketing as well.[57] One 1985 study found that men accounted for 40 percent of all food dollars spent, a significant increase.[58] Cookware manufacturers and food packagers have begun gearing their advertising to male consumers.[59] New

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52 Advertising Age (July 16, 1982), p. M-16.

53 Survey, "Life Styles of Young Working Women," Mar. 1988.

54 Advertising Age (Aug. 1, 1985), p. 4.

55 Magazine Age (Spring 1982), p. 10.

56 Inside Print (March 1989), p. 35.

57 Magazine Age (Dec. 1981), p. 28.

58 Advertising Age (Oct. 13, 1986), p. S4.

59 Advertising Age (Mar. 14, 1985), pp. 15, 22.

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concern among men for their physiques also has led soft drink makers to position their "diet" and "light" products to men as well as women.[60] The manufacturer of Taster's Choice instant coffee pulled the image of a woman off the product's label and replaced it with that of a man.[61] Similarly, in Japan, the woman advertising FIBE-MINI, a high fiber drink, is portrayed running her office efficiently and competently, "while males in other ads scrub bathtubs and cook meals."[62] Over half of the sales of FIBE-MINI, a drink originally marketed to women, are to male consumers. Perhaps it is not surprising, then, that since its introduction in the Hong Kong market, Philip Morris has found half of the sales of its brand Virginia Slims, identified as a women's brand in the United States, are going to men.

These data confirm that the consumption habits of men and women are converging across the spectrum of consumer products. The consumption patterns of women with respect to smoking are simply one instance of this general trend. As John Jenkins notes, "far from being a moulder of society, [advertising] appears, for the most part, simply to reflect

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[60] Marketing Communications, vol. 11, no. 3, p. 43 (March 1986).

[61] Advertising Age (Sept. 12, 1985), p. 17. See also Adweek (Aug. 13, 1990), "Spotlight -- Men," p. M.1 ("He's tough. He's tender. He's vain. He washes dishes. He diapers babies. He cries. He shops. He's the new man, * * * [and he's] arrived just in time.").

[62] "Japan's New Woman" at 16.

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those attitudes and norms which prevail in a society at any given time."[63] If anything, advertisers are often accused of *lagging behind* progressive social trends.[64]

Thus, those seeking an explanation for smoking by women cannot find it in advertising. Advertising is not responsible for women smoking, and banning advertising would not reduce the numbers of women smokers. Censorship cannot be justified in the name of "protecting" women from cigarettes.

C. Cigarette Advertising and U.S. Racial Minorities

If prevalence of smoking is taken as a measure of "vulnerability" to cigarette advertising, then black youth in the United States actually are among the least "vulnerable" in our society. If quitting trends are taken as a measure of "resistance" to cigarette advertising, then U.S. blacks in general are no less "resistant" than whites and black males actually are more "resistant" than white males.

Data reported by the U.S. Secretary of Health and Human Services and the Surgeon General confound the hypothesis

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[63] Jenkins, *Tobacco Advertising and Children: Some Canadian Findings*, International Journal of Advertising (7), 357-67 (1988) at 364.

[64] *See also* Terence H. Qualter, *Advertising and Democracy in the Mass Age* 69-79 (1991); Rena Bartos, *The Moving Target: What Every Marketeer Should Know About Women* 228ff. (1982); Rosemary Scott, *The Female Consumer* 224 (1976); Dorothy Aaron, *About Face: Towards a Positive Image of Women in Advertising* 8 (1975).

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that African-Americans are particularly "vulnerable" to cigarette advertising. The Secretary of Health and Human Services reported, for example, the "black smokers tend to start smoking at older ages than white smokers."[65] According to the Secretary, 49.1 percent of white smokers started smoking before the age of 18, while only 31 percent of black smokers started smoking before the age of 18.[66] The Secretary also reported that black smokers smoke fewer cigarettes a day than do white smokers,[67] and the Surgeon General has stated that "[h]eavy smoking has been consistently more common among whites compared with blacks."[68] The incidence of smoking among blacks in 1986 (28.4 percent) was only slightly higher than the incidence of smoking among whites (26.4 percent).[69] It is now essentially the same.[70] For persons in the 20-24 age group, the incidence of smoking among blacks is <u>less</u> than that for whites, reflecting a

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[65] *Smoking and Health: A National Status Report* 19 (2d ed. 1990) ("Smoking and Health").

[66] *Ibid.*

[67] *Id.* at 7.

[68] U.S. Department of Health and Human Services, *Reducing the Health Consequences of Smoking: A Report of the Surgeon General* 293 (1989).

[69] *Smoking and Health, supra,* at 16.

[70] "Smoking Declines At A Faster Pace," *New York Times,* May 22, 1992, at A16, col. 1.

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greater rate in the decline of smoking among blacks relative to that among whites.[71]

According to the 1989 report of the Surgeon General, smoking among blacks overall has been declining at about the same rate as smoking among whites in recent years.[72] During the 1974-1985 period, "smoking prevalence among black men was decreasing at a faster rate than among white men * * *. There were no significant differences noted in the rates of decrease among women of either race * * *.[73] Indeed, "black males have been quitting smoking at a significantly higher rate of change than white males.[74]

Although data concerning smoking among Hispanics are less developed than smoking among other ethnic groups, the patterns and trends in smoking among Hispanics are inconsistent with the premise that Hispanics are "vulnerable" to cigarette advertising. The Center for Science in the Public Interest (CSPI) has reported that, based on several surveys, "Hispanic women tend to smoke considerably less than Blacks or Whites, whereas Hispanic men tend to smoke at about the same

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[71] *Differences in Age of Smoking Initiation Between Blacks and Whites -- United States*, Journal of the American Medical Assoc. 266 (22) 3112-13 (1991) (reporting data from CDC's National Health Interview Survey for 1987-88).

[72] *1989 Report*, *supra*, at 270.

[73] *Id.* at 271.

[74] *Id.* at 271.

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Source: https://www.industrydocuments.ucsf.edu/docs/ryhl0000

rate as other men."[75] The major study of smoking by Hispanics by Rogers and Crank has found that: "Hispanic males are as likely to smoke as anglo males; however, Hispanic males consume fewer cigarettes. Hispanic females compared with anglo females seldom smoke; when they do, they smoke fewer cigarettes."[76] Other studies reflect similar conclusions.[77] A 1988 survey undertaken by the Centers for Disease Control in 1988 found that the overall prevalence of smoking was lower among Hispanics (23.5%) than among non-Hispanics (28.4%)[78]

These figures clearly do not support the premise, which underlies claims of improper "targeting," that blacks and Hispanics somehow are peculiarly susceptible to cigarette advertising. The belief that U.S. minorities are peculiarly susceptible to cigarette advertising reflects a basic misunderstanding of advertising, a fundamental misperception

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[75] *Reducing the Health Consequences of Smoking: 25 Years of Progress* 512 (1989).

[76] Rogers & Crank, "Ethnic Differences in Smoking Patterns: Findings from NHIS," 103 Public Health Reports 367, 368 (1988).

[77] *See* Remington, *et al.*, "Current Smoking Trends in the United States: The 1981-1983 Behavioral Risk Factor Surveys," Journal of American Medical Association, vol. 23, p. 2975 (1985); Marcus & Crane, "Smoking Behavior among U.S. Latinos: An Emerging Challenge for Public Health," Am. J. Pub. Health, vol. 75, p. 169 (1985); Marcus & Crane, "Smoking among Hispanics: A Preliminary Report," Advances in Cancer Control: Epidemiology and Research 141, 142 (1984).

[78] *Cigarette Smoking Among Adults -- Unites States, 1988*, Journal of the American Medical Association 266 (22) 3113-14 (1991).

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Source: https://www.industrydocuments.ucsf.edu/docs/ryhl0000

of smoking patterns and trends among blacks and Hispanics -- and an elitist "we know better" attitude.

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PROMOTIONAL ACTIVITY BY CIGARETTE MANUFACTURERS

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PROMOTIONAL ACTIVITY BY CIGARETTE MANUFACTURERS

- Cigarette manufacturers use a variety of promotional techniques to compete for market share – things like free product samples, discounts offered through coupons or the dispensing of premiums with the product.

- The purpose of promotional activities is two-fold. One, to introduce smokers to the brand being promoted, and provide incentive for smokers to choose that brand. And two, to maintain awareness of a brand.

- Growth of promotional activities is outpacing general advertising by 2-1/2 times, and that's across industry boundaries. The ratio of promotion advertising by the U.S. cigarette industry is in line with ratios for other industries.

- Sampling is time-honored method of introducing consumers to products. It is directed toward adult smokers only. Cigarette manufacturers subscribe to a code of sampling practices that prohibits distribution to minors.

- Coupons and premium especially appeal to existing users of a product category. A cents-off coupon is incentive to try new brand or to stick with the old. However, it certainly is not incentive to begin smoking.

- As with sampling, tobacco manufacturers adhere to their self-regulatory codes to avoid marketing to children.

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Source: https://www.industrydocuments.ucsf.edu/docs/ryhl0000

PROMOTIONAL ACTIVITY BY CIGARETTE MANUFACTURERS

- Cigarette manufacturers use a variety of promotional techniques to compete for market share, e.g., free product samples, discounts offered through coupons, dispensing of premiums with the product.

- Promotional activities: 1) introduce smokers to the brand being promoted, and provide incentive for smoker to choose that brand; and 2) maintain awareness of brand.

- Growth of promotional activities across industry boundaries has been 2 1/2 times faster than general advertising. U.S. cigarette industry ratio of promotion to advertising is in line with ratio for other industries.

Sampling

- Sampling is time-honored method of introducing consumers to products.

- Tobacco product sampling is directed toward adults who are already smokers. Cigarette manufacturers subscribe to a code of sampling practices that prohibits distribution to minors.

Coupons and Premiums

- Coupons and premiums especially appeal to existing users of a product category, e.g., cents-off coupon is incentive to try new brand or stick with old.

- Tobacco manufacturers adhere to their self-regulatory codes to avoid marketing to children.

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Source: https://www.industrydocuments.ucsf.edu/docs/ryhl0000

PROMOTIONAL ACTIVITY BY CIGARETTE MANUFACTURERS

Cigarette manufacturers not only advertise their products to smokers -- in newspapers and magazines, through billboards and other outdoor media, through point-of-sale displays, and on television and radio as allowed. In addition to these communications, which are essentially verbal, cigarette manufacturers use a variety of promotional techniques to compete for market share. Such techniques may include the distribution of free product samples, discounts offered to smokers through coupons and the dispensing of premiums with the product.

As with advertising, promotional activities are not undertaken to encourage people to smoke. Rather, promotional activities introduce smokers to the brand being promoted and provide smokers with incentives to choose that brand over others. Promotional activities also maintain awareness of the brand being promoted and "work" only because the consumer already has decided to use the product category. There is no evidence that such activities stimulate smoking. Banning such activities therefore would not reduce smoking.

In recent years, consumer product manufacturers have increasingly relied on such promotional activities. *Advertising Age*, a U.S. weekly trade magazine, has reported that "[i]n the battle for growth, sales promotion is whomping

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general advertising."[1] Cutting across industry boundaries, sales promotion has been growing 2½ times faster than general advertising.[2] In the U.S., the cigarette industry's ratio of promotion to advertising is in line with the ratio for other industries.[3]

Sales promotion includes a wide variety of marketing techniques, "ranging from sophisticated computer-driven sampling and testing programs to actors in chicken suits handing out coupons for fast food."[4] Standard promotional techniques include couponing, premiums and money-back offers, sweepstakes, cents-off, sampling and contests. Many manufacturers also tie their promotions to specific events such as the Olympics. Cigarette manufacturers who rely on similar devices to promote their brands are no different.

1. Sampling

Sampling is a time-honored method of introducing consumers to new brands of a product or reintroducing them to old ones. Tobacco product sampling is directed toward adults who are already smokers -- not to nonsmokers or to children. In most countries, moreover, the sale and distribution of

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1 Advertising Age, p. S-1 (May 1, 1989).

2 *Ibid.*

3 "Sixteenth Annual Industry Report," Premium Incentive Business (July 1989), p. 33.

4 Advertising Age (Feb. 6, 1986), p. 13.

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Source: https://www.industrydocuments.ucsf.edu/docs/ryhl0000

cigarettes to minors are prohibited by law. In Taiwan, the sale of cigarettes to persons under 18 is illegal and violators are subject to fines of up to NT$ 6000.[5] Korea and Japan both prohibit smoking by persons under 20 entirely.[6] Vigorous enforcement of these laws should be sufficient to address any problem in this regard that may be thought to exist.

More importantly, the cigarette manufacturers themselves generally subscribe to a code of sampling practices that prohibits the distribution of cigarette samples to minors. In Hong Kong and Taiwan, for example, the industry code states that persons who are clearly under the age of 18 cannot be approached with cigarette samples. Any person approached with a sample will be asked to confirm that he or she is 18 years of age or older. In Korea, single cigarette samples can only be offered to adult smokers within one meter of a licensed retail outlet, and samplers may ask to see a residence registration card to determine the recipient's age.

2. Coupons and Premiums

Coupons and premiums are examples of marketing tools that increasingly are used to attract and retain customers. Manufacturers cannot rely simply on advertising to differ-

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[5] Teenage Welfare Law (Jan. 23, 1989).

[6] Minor Protection Act, as amended (Dec. 28, 1979) (Korea); Law Prohibiting Smoking to Minors, as amended (Dec. 22, 1947)(Japan).

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Source: https://www.industrydocuments.ucsf.edu/docs/ryhl0000

entiate their brands from those of their competitors, or on the essentially verbal communications that advertising conveys. In addition, manufacturers provide smokers with incentives to try their brands. Such incentives may include discount offers ("cents-off" or "two-for-one" offers) and nontobacco premiums sold with the product. Such incentives characteristically are offered on a temporary basis.

Clearly, such techniques appeal to existing users of the product category. No one would be persuaded to start smoking by a cents-off coupon, for example, but a smoker very well might be persuaded to try the brand. No one would be persuaded to start smoking by the offer of a free cigarette lighter, but a smoker might very well be tempted by the offer. In the hard-fought battles of market share among cigarette companies, discounts and premiums represent a way to promote and retain brand loyalty.

As with sampling, the tobacco manufacturers have been vigilant in adhering to their self-regulatory codes to avoid marketing to minors.

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PROMOTIONAL ACTIVITY BY CIGARETTE MANUFACTURERS

Selected Source Materials

None

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BRAND AND CORPORATE SPONSORSHIP

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BRAND AND CORPORATE SPONSORSHIP

- Cigarette manufacturers have been long-time sponsors of sporting and cultural events through monetary grants and in-kind assistance; they were one of the first industries to do so.

- Sponsorship bans and restrictions intrude on the right of private groups and individuals to freely select their funding sources.

- Banning sponsorship of cultural and athletic events would have no effect on smoking rates, but would have adverse consequences for sporting and cultural activities. The monetary support provided by corporate sponsorships sometimes determines whether or not an event will be held.

- Corporate sponsorship can also provide other benefits – it's not just money. There often is in-kind assistance in the form of mass marketing experience and knowledge, logistical support, and even the creation of financial management programs to ensure long-term viability of the donee organizations.

- This ultimately means higher quality, more professionally managed events, with reduced financial risk to the administrators of these organizations.

- There is no basis for claims that sponsorship is a form of advertising that influences people to smoke. It is absurd to suggest that non-smokers may be overcome with an irresistible urge to begin smoking by occasionally attending an event like Virginia Slims tennis, Kool Jazz Festival or Winston Cup stock car race.

- In addition, cigarette manufacturers do not sponsor sports or cultural events directed at youth.

- The central goal of most corporate sponsorship is not to advertise a particular brand or product. Corporate sponsorship enhances the corporate image, and is a way to repay the loyalty of consumers and communities.

- It also demonstrates a corporation's responsibility to society and its good citizenship; internally, it's a real morale booster and encourages creativity.

NOTES.5 –5/01/94

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Source: https://www.industrydocuments.ucsf.edu/docs/ryhl0000

- If corporate sponsorship were replaced with government funding or earmarked taxes as some suggest, artistic, cultural and sporting groups could lose in-kind assistance, and would be threatened by arbitrary and bureaucratic decision-making, and official censorship. Look what happened to the National Endowment of the Arts in the United States when the government got involved in determining definitions of art.

- Banning corporate sponsorship will have no effect on the incidence of smoking among adults or minors, but it could have a devastating effect on the future of many cultural and sporting events.

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Source: https://www.industrydocuments.ucsf.edu/docs/ryhl0000

BRAND AND CORPORATE SPONSORSHIP

- Cigarette manufacturers have long sponsored cultural and athletic events through monetary grants and in-kind assistance.

  Central goal of most corporate sponsorship is not to advertise a particular brand or product, but: 1) to enhance corporate image; and 2) repay loyalty of the corporation's consumers and communities.

- Sponsorship bans and restrictions intrude on the right of private groups and individuals to select their own funding sources.

- Banning tobacco company sponsorship of cultural and athletic events would have no effect on smoking rates, but would have adverse consequences for sporting and cultural activities.

Benefits of Sponsorship

- Monetary support. Tobacco company sponsorships contributed $3.45 billion to sports events in the United States in 1990. Some of these events could not have been held without the benefit of tobacco company sponsorships.

- Marketing experience. Experience and knowledge of mass marketing provided by a corporate sponsor can be critical to the success of a cultural or sporting event, particularly with events unfamiliar to the general public.

- Logistical support. Sponsors often provide logistical and operations support and ancillary event staffing, help create and maintain sound financial management programs to ensure long-term viability of the donee organizations, and donate computer time, advertising space and office help as well.

- Indirect benefits. Higher quality, more professionally managed events, with reduced financial risk to governmental bodies. Provides professional athletes, musicians and performers with additional employment.

Why Bans Are Unjustified

- No basis for claim that tobacco sponsorships is influence nonsmokers to smoke.

- Absurd to suggest that non-smokers may be overcome with irresistible urge to begin smoking by attending an event like Virginia Slims tennis, Kool Jazz Festival or Winston Cup stock car race.

SUM.5 – 5/01/94

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Source: https://www.industrydocuments.ucsf.edu/docs/ryhl0000

- Cigarette manufacturers do not sponsor sports or cultural events directed at youth.
- Corporate sponsorship demonstrates corporate donor's responsibility to society and its good citizenship; internally, it boosts morale and encourages creativity.

  Brand sponsorship is an acknowledged tool for promoting brand awareness in a mature product market.

Risks of Sponsorship Restrictions

- Sponsorship bans and restrictions reduce the right of private groups and individuals to choose their own funding sources and may leave them dependent on the state.
- Dangers of replacing corporate sponsorship with government funding or earmarked taxes: loss of in-kind assistance, and would be threatened by arbitrary and bureaucratic decision-making, and official censorship.
- Sponsorship bans leave fewer sponsors chasing after the same number of events, threatening the very existence of many valuable sporting and cultural endeavors.
- Will have no effect on incidence of smoking among adults or minors.

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BRAND AND CORPORATE SPONSORSHIP

> "Freedom of expression in the arts and freedom of expression in advertising are not two categorically different things, subject to different standards and having different justifications; they are the same freedom, exercised in different contexts, with the same justification."[1]

Cigarette manufacturers have long sponsored events of sporting and artistic interest and importance. Whether under the corporate rubric or identified with a particular brand, sponsorship makes possible events as diverse as art exhibitions in major or local museums, symphony hall concerts, folk festivals, tennis tours and racing competitions. Sponsorships provide support not only in the form of dollars but also in the form of in-kind assistance.

Sponsorship bans and restrictions intrude on the right of private groups and individuals to freely select their own sponsor. As Richard Luers, President of New York's Metropolitan Museum of Art, has observed:

> "[P]rivate sector support of the arts involves two basic freedoms of choice: the potential sponsor may or may not wish to participate; the potential grantee may or may not wish to accept what has been proffered. These two freedoms serve to rationalize both the business and cultural interest in terms of the ultimate societal interests. They need not, in our opinion,

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[1] John Gray, *Advertising Bans: Administrative Decisions or Matters of Principle?*, p. 10 (Social Affairs Unit, London, 1991).

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Source: https://www.industrydocuments.ucsf.edu/docs/ryhl0000

be further curbed in unnecessarily restrictive legislation."[2]

Sponsorship is a means of enhancing corporate image and brand stability by repaying the loyalty of consumers. Its benefits are acknowledged by artists, performers, athletes and organizations around the world. Banning sponsorship of cultural and athletic events would have no effect on smoking rates, but it would have many adverse consequences for sporting and cultural activities.

1. The Benefits of Sponsorship

The support that cigarette manufacturers contribute to sponsored events is substantial. Sponsorships contributed $3.45 billion to sports events in the United States in 1990, according to a study from the Sports Marketing Group and the Associated Press.[3] In some cases, it has made the difference in whether the event will be held at all, or the way in which a sport is perceived by the public. Its loss would have severe financial and other consequences for those who depend on it. Replacing so important a source of private funding would be difficult, and frequently may be impossible. It is not enough to point to one or two events which, thanks to earlier support, are now economically viable or which could draw other sponsors. One also must consider whether the event

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[2] "Arts Program Publisher Hits Measures to Ban Tobacco Ads," The Washington Post, p. F-7 (August 12, 1987).

[3] *Advertising Age*, September 1991 (no page number).

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Source: https://www.industrydocuments.ucsf.edu/docs/ryhl0000

could have achieved its current viability without steady support over the years. In the absence of this support, the next event may never have an opportunity to become viable.

Corporate sponsorship means much more than simply providing funds. Experience and knowledge of mass marketing, for example, can be critical to the success of a sporting or artistic event, particularly events with which the general public is unfamiliar. Mass marketing expertise plays an especially critical role in "democratizing" various cultural events. For example, the appeal of country music in the U.S. and dart-throwing tournaments in Britain has been broadened to include fans of all classes and ethnic groups.

In addition to public relations expertise and services, sponsors often provide logistical and operations support and ancillary event staffing as needed. They help create and maintain sound financial management programs to ensure the long-term viability of the donee organizations. They also donate computer time, advertising space, construction help, office space and transportation. They commission art for display in the workplace and make lobbies available for exhibits.

The World Federation of Advertisers counts among the indirect benefits of sponsorship higher quality, more professionally managed events, with reduced financial risk to the administrative bodies. Sponsorship has been at least partly responsible for providing professional athletes, musicians,

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and performers with an increasing number of jobs.[4] Philip Morris alone has sponsored professional tennis in Mexico, motorbike racing in Latin America, the Thomas Cup badminton championship in Indonesia and Malaysia, soccer and the Marlboro Superseries (cycling) in China, and the Marlboro Safari Road Rally in Kenya, to name a few examples.

2. Why Bans Are Unjustified

The claim that sponsorship is a form of advertising that influences people to smoke is unfounded. There is no basis for the supposition that seeing a cigarette brand name on a racing car, or associating a brand name with a jazz festival or a tennis tournament, will make anyone start smoking or dissuade anyone from stopping. By any measure, it is absurd to suggest that nonsmokers of any age may be overcome with an irresistible urge to begin smoking simply because they occasionally attend an event like a Virginia Slims tennis tournament, a Kool Jazz Festival, or a Winston Cup stock car race. As discussed elsewhere, the evidence shows that even total advertising bans do not result in reduced smoking. There is even less reason to believe that brand or company sponsorship bans would have an effect on the incidence of smoking. The cigarette manufacturers do not sponsor sports or cultural events directed at youth.

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[4] WFA, *Commercial Sponsorship: A Sponsor's View*, (no date).

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Sponsorship has long been employed by tobacco companies -- like other companies -- and it is not a "recent tactic" to counter or subvert advertising restrictions. Claims that event sponsorship is a form of advertising that encourages smoking also overlook the basic purposes of corporate sponsorship and philanthropy and of any advertising in mature product markets.

The central goal of most *corporate* sponsorship is not to advertise a particular product or brand. Rather, such sponsorship is a means both of enhancing a corporation's image and repaying the loyalty of its consumers and communities. It demonstrates a corporate donor's responsibility to society and its good citizenship. Equally important, sponsorship enriches a corporation's internal culture by boosting morale and encouraging creativity. Employees feel an extra sense of pride when they work for a company that honors the arts and contributes to the life of the community. Philanthropic activities by corporations have been increasing generally, and tobacco companies are no exception to that trend.

Where it is identified with a brand, sponsorship is an acknowledged tool for promoting brand awareness. Marketing professionals agree that *brand* sponsorship is well-suited to the mature product market, because it is best employed to

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achieve that goal.[5] There is no reason to believe that sponsorship has any potential for increasing the total demand for cigarettes. The Western Australian Parliament Legislative Council concluded that "any decision to ban all forms of tobacco advertising, including sports sponsorship is purely a political decision . . . not based upon irrefutable empirical evidence."[6]

3. The Risks of Sponsorship Restrictions

Sponsorship bans and restrictions reduce the right of private groups and individuals to choose their own sponsor. A survey of more than 100 professionals in arts organizations in the United Kingdom found that tobacco sponsorship would be accepted by two-thirds of respondents, indicating that "arts organizations are quite capable of deciding whether or not it is appropriate to accept certain forms of sponsorship, without any regulation being imposed upon them."[7] Thus, in Great Britain, it was found that "[t]he sponsorship of sport is fully accepted by the British public provided there is no

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[5] *See Sponsorship: Its Role and Effects*, 6 (Global Media Commission of the International Advertising Association, September 1988); *see also* Russell Abratt, Brian Clayton and Leyland Pitt, *Corporate Objectives in Sport Sponsorship*, International Journal of Advertising (6) 299-312 (1987).

[6] Report of Standing Committee on Legislation in Relation to the Tobacco Bill 1990 (November, 1990).

[7] Colin Tweedy, Director General of the Association for Business Sponsorship of the Arts, quoted in Press Release dated Oct. 9, 1991.

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attempt by sponsors to influence unduly the essential nature or the government of sport . . . There is little public support for any prohibition by government of sports sponsorship which would deprive sport of income from any legitimate source."[8]

Similarly, the Australian Parliament recognized that a ban on sponsorship would reveal an unjustified hypocrisy on the part of "health paternalists." "Some people have quite extraordinary ideas of what is good or bad for us which raises the question of where the line should be drawn so far as government intervention in sports sponsorship is concerned."[9] Sports administrators meeting under the auspices of the Confederation of Australian Sport produced a consensus view that "government should not interfere with the rights of the sporting associations to accept or reject sponsorship."[10]

The dangers of replacing corporate sponsorship and know-how with government funding or earmarked taxes include not only the loss of this in-kind assistance, but the threat of arbitrary and bureaucratic decision-making, or worse, official censorship. As experience in the United States with

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[8] "The Howell Report" 21 (Central Council of Physical Recreation, Committee of Enquiry into Sports Sponsorship 1983).

[9] "*Can Sport Be Bought?*," The Second Report on an Inquiry into Sports Funding and Administration, House of Representatives Standing Committee on Finance and Public Administration, at 94, 108.

[10] *Id.* at 94.

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the National Endowment for the Arts has shown,[11] the politicization of such funding can pose a real threat to free expression and organizational independence. These dangers also are evident in the arrangements for governmental funding of events in the Australian state of Victoria, where government sponsorship contracts *require* the display of certain public interest messages and *restrict* other messages as well as athletes' endorsement activities.

Sponsorship bans trample on the rights of private groups and individuals to choose their own sources of support. They also reduce the competition for sponsorship opportunities, with fewer sponsors chasing after the same number of events. As a result, such bans many threaten the very existence of many valuable sporting and cultural endeavors. They are a form of censorship that is contrary to democratic values. They punish, rather than encourage, altruistic behavior by private companies. At the same time, sponsorship restrictions offer no positive benefits. Reducing or eliminating tobacco sponsorship will have no effect on the incidence of smoking among either adults or minors.

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[11] *See, e.g.*, Robert J. Samuelson, "Highbrow Pork Barrel," *Newsweek* 44 (August 24, 1989).

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BRAND AND CORPORATE SPONSORSHIP

Selected Source Materials

None

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TRADEMARK DIVERSIFICATION

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TRADEMARK DIVERSIFICATION

- Trademark diversification is not an indirect means of advertising; it is a means of exploiting a trademark that has become known and, therefore, has value.
- It is increasingly common to market new products under well-known trademark:

  –Coca-Cola clothes

  –Jaguar wallets and pens

  –Porsche sunglasses and leather goods

  –Cartier cigarettes, lighters and watches

  –Dunhill
- Vigorous efforts are made by trademark owners to prevent others from using their trademarks.
- Cigarette manufacturers face the problem of unauthorized use of their trademarks, including on products marketed to children. Like other companies, tobacco companies take legal action to protect their rights.
- Tobacco companies are makers of a legal product and should not be denied the same opportunity other companies enjoy to capitalize on popular trademarks because of notions that condemn anything associated with tobacco.
- General bans on logo licensing involving tobacco products are incompatible with well-established principles of European trademark law.

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TRADEMARK DIVERSIFICATION

- Trademark diversification is not an indirect means of advertising; it is a means of exploiting a trademark that has become known and, therefore, has value.
- It's common practice for a company to "market" new products under a well-known trademark. For example, Coca-Cola has licensed its name for a line of clothing, the Jaguar logo appears on wallets and pens, and clothing designers lend their names to products like perfume, jewelry and bed linens.
- These efforts are not aimed at marketing of the "root" product, but at branching out into other product areas using a well-known, recognizable logo as a stepping stone.
- Trademark infiingement is a problem for any company with a well-known logo. Cigarette manufacturers, just like manufacturers of other legal products, face unauthorized use of their trademarks, including on products marketed to children. Like other companies, tobacco companies take vigorous legal action to protect their rights.
- Some antitobacco activists feel that tobacco companies should not be permitted to use their logos on non-tobacco products. But, tobacco companies are makers of a legal product and should not be denied the same opportunity other companies enjoy to capitalize on popular trademarks because of notions that condemn anything associated with tobacco.
- General bans on logo licensing involving tobacco products are incompatible with well-established principles of European trademark law.

SUM.6 – 5/01/94

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TRADEMARK DIVERSIFICATION

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- These efforts are not aimed at marketing of the "root" product, but at branching out into other product areas using a well-known, recognizable logo as a stepping stone.

- Trademark infringement is a problem for any company with a well-known logo. Cigarette manufacturers, like manufacturers of other legal products, face unauthorized use of their trademarks, including on products marketed to children. Like other companies, tobacco companies take vigorous legal action to protect their rights.

- Some antitobacco activists argue that tobacco companies should not be permitted to use their logos on non-tobacco products. But tobacco companies are makers of a legal product and should not be denied the same opportunity other companies enjoy to capitalize on popular trademarks because of notions that condemn anything associated with tobacco.

- General bans on logo licensing involving tobacco products are incompatible with well-established principles of European trademark law.

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TRADEMARK DIVERSIFICATION

"[G]eneral bans on logo licensing involving tobacco products would be incompatible with long-established principles of international trade-mark law."

Ulf Bernitz,
Dean of the Law Faculty,
Stockholm University[1]

Some have proposed banning the use of tobacco product trademarks in connection with nontobacco products. Such proposals mistakenly assume that the use of such trademarks in a nontobacco context is an indirect means of advertising or promoting tobacco products. In fact, trademark diversification is not a promotional technique at all. Rather, it is a means of exploiting a trademark that has become known and therefore has value.

It is an increasingly common practice to "spin off" new products by marketing them under a trademark that has acquired some cachét. The licensed products are not marketed in an effort to sell the "root" product. Rather, the trademark has some "detachable" qualities that help build demand for the licensed goods. Many companies have thus sought to capitalize on the power of strong, well-known brands.[2]

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[1] Ulf Bernitz, *Logo Licensing of Tobacco Products -- Can It Be Prohibited?*, 4 European Intellectual Property Review 137 (1990).

[2] *See* "What's in a Name? What the World's Top Brands Are Worth," *Financial World*, Sept. 1, 1992, p. 37.

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Thus, Coca-Cola -- to name one example cited by *Financial World* -- has licensed its trademark for soft drinks for use in connection with a line of clothing. Jaguar, an automobile manufacturer, allows its trademark to be used for wallets and pens. The Porsche automobile trademark is used on sunglasses and leather goods. Cartier, the jewelers, have licensed cigarettes, lighters and watches while Dunhill, famous for pens, also makes cigarettes. Internationally known clothing designers such as Giorgio Armani, Calvin Klein, Yves St. Laurent and Ralph Lauren have licensed their names for use on products ranging from eyeglasses and underwear to umbrellas and bedsheets.

Few would maintain that these companies are attempting to market the successful products that originally carried these valuable trademarks by causing those trademarks to appear on other products. Advertisements for cologne under the "Polo" trademark seldom are decried as "indirect advertisements" for "Polo" shirts or jeans. Such trademark diversification is, instead, a standard attempt to sell a new brand in one product category by taking advantage of a trademark made popular in another -- a trademark that has come to be associated with the various hallmarks of quality. The same is true of marketing a nontobacco product under the trademark of a tobacco product.

The value of trademark diversification from one product category to another is underscored by the vigorous

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efforts made by trademark owners to prevent others from exploiting their trademarks. The use of well-known trademarks on collateral goods is endemic to the Asian countries, for example, and many multinational consumer goods companies that own internationally well-known trademarks have been victimized by collateral goods piracy in Asia. Many foreign agents and investigators work for these multinational companies to detect such piracy.

In the U.S., the winemakers Ernest and Julio Gallo, for example, sued their brother Joseph for trademark infringement for marketing cheeses under the Gallo name. No one claimed, incidentally, that Joseph was attempting to promote Gallo wine. Similarly, Fabbrien D'Ami Pietro Beretta, the gunmakers, sued General Motors for the latter's unauthorized use of the Beretta name to market a compact car. Clearly, GM's use of the name "Beretta" for its car was not a charitable effort to encourage gun sales. Rather, GM obviously chose the name "Beretta" in order to help sell a new car.

Cigarette manufacturers have faced similar problems with the unauthorized use of their trademarks. A variety of products have appeared around the world featuring the unauthorized use of tobacco trademarks and logos -- including products marketed to children or used by children. The most egregious examples include the use of tobacco trademarks and logos in connection with school notebooks, kites, gum, candy cigarettes, video games and even toys.

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The tobacco companies consider any such use as a violation of their trademark rights and policies. As with any other trademark infringement, the companies take legal action to protect their rights. Since January 1, 1987, the three members of the U.S. Cigarette Manufacturers Association have initiated approximately 342 cases against unauthorized use of their well-known tobacco trademarks on collateral goods, including more than 200 in Asia during that period. The legal remedies they have invoked exist to protect trademarks precisely because of the long-established principle that those who endeavor to build a franchise of customer goodwill should have the right to benefit from it.[3]

There is no justification in treating tobacco companies any differently from manufacturers of other products. As makers of legal products with substantial consumer recognition, the tobacco companies should not be denied the opportunity to capitalize on that recognition and diversify their product base because of ill-conceived notions that condemn anything associated with tobacco. The Marlboro name, for example, has been valued at $31 billion[4] -- one of the most valuable trademarks in the world -- and its owner should not be denied the freedom to reap the value of that trademark by applying it to nontobacco products. Indeed,

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[3] *See* "Violation of Company Trademarks Can Affect Product Sales, Image," Marketing News, August 24, 1979.

[4] *Financial World*, Sept. 1, 1992, p. 47.

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general bans on logo licensing involving tobacco products are incompatible with well-established principles of European trademark law.[5]

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[5] Bernitz, *supra* note 1, at 139.

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TRADEMARK DIVERSIFICATION

Selected Source Materials

None

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INTERNATIONAL EXPERIENCE WITH CIGARETTE ADVERTISING BANS

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BAN ON ADVERTISING—WHAT THEN?

Karl Wärnberg

The consequences of tobacco smoking have become the subject of increasing interest. This interest has centered on the health risks to which a smoker is exposed and the unpleasantness inflicted upon non-smokers by smokers. The rising consumption of tobacco by young people is often cited as a disturbing trend.

When measures are considered to reduce the consumption of tobacco, the subject of advertising always becomes an issue. It is easy to understand why tobacco advertising has become a topic of major interest. It is the most striking component in marketing efforts. One common conclusion is that people smoke more than they otherwise would, as they can hardly avoid coming in contact with advertising. It is therefore scarcely suprising that the idea of reducing tobacco consumption by banning advertising has become widespread.

REASONS FOR A BAN ON ADVERTISING

The reasons cited in different quarters for banning tobacco advertising can be summarized under three main headings: reducing consumption, avoiding starting smoking, and symbolic action.

Reducing Consumption

Reducing consumption is regarded as a desirable measure for smokers. Smokers should actually give up the habit completely. Those who do not should switch to forms of smoking which present fewer risks to health.

Starting Smoking

The proportion of smokers is increasing among young people and women. This has resulted in a demand for measures especially aimed at inducing young people not to start smoking or at least to postpone their smoking debut.

Symbolic Action

A ban on tobacco advertising would demonstrate the concern of the authorities over the rising consumption of tobacco. The absence of a ban on advertising has been interpreted as an indication of society's acceptance of tobacco advertising and the things it stands for.

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THE DECISION-MAKING PROCESS

The tobacco trade is appreciative of the desirability of channelling tobacco consumption along more innocuous lines. However, measures recommended by the government should be derived from a rational process of decision-making. Means used to reduce tobacco consumption should be assessed with respect to effects and costs. Decisive action should be taken only after the relevant facts have been gathered and analyzed, making it possible to compare the different measures. Certain measures may be ruled out at an early stage because their effects can be regarded as too slight to justify consideration. Other measures may also prove to be counter-productive to the attainment of objectives.

THE SWEDISH TOBACCO MARKET

In principle, there are no essential differences between the tobacco trade and other consumer-product trades. Businesses can be started, and competition is razor-sharp. This has led to skyrocketing advertising costs in recent years. The question can then be raised as to whether this expanded advertising is in the interests of consumers. I am personally inclined to answer "yes." Advertising is an integrated part of the competitive mechanism which compels the use of efficient, consumer-oriented product handling. This can be verified by listing the main reasons for the increasing use of advertising.

Advertising Has Furthered Product Development

The past decade has witnessed a breakthrough for product development in the tobacco trade. New cigarette brands launched in Sweden have had per-packet advertising budgets about ten times bigger than for old, established brands.

Advertising Has Furthered Price Competition

At the present, there are no restrictions on pricing and competition is fierce. This assumes that advertising informs consumers about what the market has to offer and about prevailing prices.

There are differences between the tobacco trade and other trades with respect to advertising standards. Tobacco advertising is subject to very severe restrictions which vary from country to country. Two basic principles can be distinguished in Swedish practice. Advertising is to serve as a competitive instrument and not as a device to promote large-scale smoking. Advertising may not be aimed at children and adolescents. Advertising of tobacco products shall be devised in a restrained and proper manner. Advertisements for smoking tobacco products are restricted to showing a picture of the product and the package. Texts must be kept strictly informative and may not contain any formulations of suggestive character.

Strict rules also apply to which advertising media may be used. Weeklies and other publications primarily aimed at readers under 21, sports magazines, the sports pages of daily newspapers and cinema adverting films are examples of prohibited media. Tobacco advertising may not occur in schools nor in premises used

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by children and adolescents. Nor may tobacco products be advertised in public transport facilities, outdoors (on bill boards), at bus stops, stations, in hospitals, or in other public health units, or by direct mail.

The question of whether an advertising measure constitutes an infringement of the rules is determined by the Consumer Ombudsman and the Market Court in accordance with stipulations in the Marketing Practices Act. The Marketing Court has been authorized to use due process of law in order to increase the stringency of ethical rules. As a result of different court rulings, this has been the case to no mean degree. Substantial fines must be paid by anyone found violating the rules.

SCOPE AND DESIGN OF AN ADVERTISING BAN

A ban on tobacco advertising is currently being discussed in many parts of the world. The consequences of any such ban will depend on its scope and design. Many different models are conceivable. The definition of "tobacco products" should not prove to be any problem. However, including all kinds of tobacco products in a ban on advertising is by no means self-evident. Should advertisements for snuff (an example of a sound alternative to smoking) be forbidden?

The concept "advertising" is much harder to define. There are many sales promotion measures which could replace advertising. They would exert a clandestine influence, in contrast to the advertising readily discernible by the public. If these measures are also included in any ban on advertising, difficulties in exercising due control are bound to increase. How is the line to be drawn between prohibited and permissible advertising in a shop?

One of the most difficult problems presented by any ban on advertising would be to distinguish between advertising and printed arguments protected by "freedom of the press" statutes. A ban on advertising must not put a stop to important consumer information on new products, new sales outlets, price changes, tests of nicotine and "tar" content, etc.

Only a few of the administrative problems associated with a ban on advertising have been touched on here. The idea was not to conduct an inventory of these problems but merely to provide examples of some of them. A basic requirement for controls is that they must not give rise to arbitrariness. Nor should they lead to administrative efforts and cost increases which are disproportionate to the objectives of controls. Many factors suggest that a ban on advertising will lead to impaired efficiency and to questionable legal situations. The basic problem concerning the effectiveness of a ban on advertising is whether the ban achieves its objectives. To what extent will a ban on tobacco advertising lead to reduced consumption of tobacco and a decline in the number of new smokers?

HOW VALID ARE ARGUMENTS FOR A BAN ON ADVERTISING?

Total Tobacco Consumption

Tobacco advertising always aims at promoting the sale of individual brands. The question then is whether or not advertising for a brand product has any effect on total demand for tobacco.

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One country in Western Europe, Italy, has a ban on advertising. The ban was introduced in 1962. There are a number of countries in Eastern Europe, such as the Soviet Union, Poland and the German Democratic Republic, which have only a limited amount of tobacco advertising. Any measurable effect on tobacco consumption by advertising should be apparent if different countries are compared. Unfortunately, no such special studies have been conducted on consumption level and consumption trends in countries with and without tobacco advertising. However, it should be noted that Italy has displayed a far greater increase in per capita cigarette consumption than Sweden. As far as we can determine, cigarette consumption in Eastern European countries has also increased more rapidly than in Sweden. The comparisons were based on the "number of cigarettes" consumption unit. If consumption is measured in terms of weight, the consumption of cigarettes per adult has actually declined in Sweden since the middle of the 1960s as a result of a change to smaller cigarettes.

New Smokers

It is also evident that a ban on advertising can only reduce the number of smokers if tobacco advertising is capable of enticing people to start smoking in the first place. Therefore, the smoking debut of young people is a matter of special interest.

Research conducted into the reasons why people start smoking point unequivocably to social and psychological causative factors, such as compensation mechanisms, group adaptation, revolt against authority and curiosity. As far as we know, advertising has never been ascribed any causative role.

Conclusions

To summarize, there is no evidence to support the view that a ban on advertising would have a positive effect on smoking habits. No empirical research has been able to show that aggregate brand advertising leads to greater total tobacco consumption. Nor has anything been found to suggest that advertising entices non-smokers, young people in particular, into becoming smokers. It follows, therefore, that there can be no evidence showing that a ban on advertising would result in reduced tobacco consumption and fewer new smokers.

Competition and a Ban on Advertising

In addition to their intended, immediate effects, every system of controls, including a ban on advertising, produces a number of side-effects. These side-effects may be beneficial or adverse depending on the nature of the controls. In many instances, side-effects acquire greater importance than main effects.

Advertising and Product Development

Advertising provides a means with which salesmen are able to communicate. Information on different changes can be transmitted via advertising. In the case of tobacco products, for example, changes of this type may involve the introduction of new products, product versions and new packaging. Advertising is also used to provide reminders about product assortment and other circumstances.

This leads to the conclusion that advertising and product development are closely linked.

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To a great extent, product development has aimed at adapting cigarettes in response to medical research findings on tobacco and health. A primary objective has been to reduce the "tar" content of cigarette smoke. Relinquishing advertising as a means of influencing smoking habits would be an unfortunate development.

SIDE-EFFECTS OF A BAN ON ADVERTISING

A ban on the use of advertising would not result in any decline in the intensity of competition. However, competition would be transformed. Certain companies would be favored; others would be at a disadvantage. The results would depend upon the measures allowed to replace advertising. It is difficult to make any forecasts in this respect.

Personal selling would probably increase. It follows that communications would have to be verbal if mass-media messages were prohibited. In addition to using more conventional salesmen, companies would also employ shop consultants, demonstrators, course leaders etc.

Imaginative marketers will also obviously think up many new sales promotion measures. Retailers will acquire a key role when opportunities disappear for direct producer communication with tobacco consumers. Retailers are the people in touch with the public. Tobacco companies will vie with one another for access to dealer shop windows and shelves, offering enticements such as rents, fees, contests, premiums, rebates, etc.

I believe that we are all appreciative of the problems faced by the authorities in trying to reconcile two partially irreconcilable ambitions: a free tobacco market and a damper on tobacco consumption. However, we feel that there are other and better measures than a ban on advertising, a measure which would disrupt efficient machinery for product development and information.

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INTERNATIONAL EXPERIENCE WITH CIGARETTE ADVERTISING BAN

- In general, there is no relation between smoking incidence -- in juveniles or adults -- and advertising restrictions. In fact, numerous studies indicate that consumption is declining in many countries where advertising is allowed, while increasing in many countries where it is prohibited.

- For example, in Finland and Norway, where tobacco advertising has been banned for more than a decade, the incidence of smoking among youth has either remained essentially the same or increased since imposition of the bans. These findings are corroborated by other studies, including a survey by the World Health Organization.

- Studies also indicate that smoking by adults is unaffected by advertising controls. For instance, in a study of Soviet-bloc countries and free-market economies, smoking increased in the Soviet-bloc countries, even though advertising didn't exist at that time, while smoking in the free-market countries was not substantially affected.

- Introduction of U.S. cigarettes in Japan, South Korea, Taiwan and Thailand has not caused an increase in smoking. The only impact of the introduction of U.S. cigarettes was that some consumers switched from domestic brands to U.S. brands. The government tobacco monopolies continue to dominate the market.

- A report by the Toxic Substances Board of New Zealand purported to show that there is a relationship between legislation banning tobacco promotion and reduced uptake of smoking by juveniles. In reality, the study was flawed, and its conclusions invalid.

- The TSB report was cited in the recent Quebec Superior Court decision in 1991 which struck down Canada's tobacco advertising ban as unconstitutional. The Court stated that neither the TSB report or nor any scientific document demonstrated that a ban on advertising would affect consumption.

- The Quebec Court of Appeal subsequently reinstated the advertising ban even though it agreed that the evidence at trial failed to establish that the ban was likely to reduce consumption. The Canadian Supreme Court has agreed to hear a challenge to the Court of Appeal's decision.

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INTERNATIONAL EXPERIENCE WITH CIGARETTE ADVERTISING BANS

- In general, there is no relation between smoking incidence in a particular country and advertising restrictions in that country.
- Tobacco product consumption appears to be higher in many countries where advertising is forbidden than in many countries where advertising is allowed.

Trends in Smoking Among Young People in Scandinavia

- Finland
  - Tobacco advertising severely restricted since 1978.
  - Smoking incidence among juveniles had been declining sharply before the ban.
  - Smoking incidence among juveniles increased after imposition of ban.
  - "On the basis of the situation of the early 1990s, smoking does not appear to be decreasing at the moment." (1991 study published in Finnish Medical Gazette.)
- Norway
  - Tobacco advertising banned in 1975.
  - Total incidence of daily smoking among adults remained essentially unchanged between 1979 and 1989.
  - If juvenile smoking incidence had declined significantly since 1975, adult smoking incidence would have fallen correspondingly, which it did not.
  - "Smoking incidence in 1987 remained higher in Norway than in United States or Great Britain."
  - "Even though the law to stop tobacco advertising has a meaningful content, we cannot see that it has had a fundamental effect upon the sale or use of tobacco." (Göestam and Götestam, Smoking and Attitudes Toward Smoking in Norway (1990).)

Cross-country Surveys on Juveniles

- WHO survey found "no systematic differences" between juvenile smoking in countries where tobacco advertising is completely banned (e.g., Norway, Finland) and in countries where it is not (e.g., England, Austria).

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- Three Children's Research Unit (CRU) studies and WHO study disclose that the incidence of smoking among young people is higher in many places where advertising is banned than where it is not, or the incidence of juvenile smoking is found to be virtually identical in both situations.

- Examples

  – 16-country study by CRU: proportion of 11-15-year-olds who said they smoke regularly was significantly higher in Norway (13%) and Sweden (10%) than in Spain (7%) (minor advertising restrictions), Hong Kong (3%) (few tobacco advertising controls), or Kenya (0.5%) (no restrictions).

  – Singapore: Tobacco advertising banned since 1970. Health Ministry data indicate smoking among 15-19 year-old boys jumped from 5.5% in 1987 to 12.3% in 1991.

Tobacco Advertising and Smoking by Adults

- Evidence indicates that tobacco product consumption by adults is unaffected by advertising controls.

- Developed countries

  – Statistics from Finland and Norway establish that adult per capital tobacco product consumption began declining before advertising controls were imposed and thereafter either continued to decline or increased somewhat.

  – 16-country study of 8 Soviet-bloc countries and 8 free-market countries disclosed that smoking increased between 1970 and 1984 in Soviet-bloc countries, even though advertising did not exist during this period. Consumption trends for 8 free-market countries not substantially affected.

  – R. Masironi table of yearly cigarette consumption per adult in 122 countries. Judging by per capita consumption, one cannot tell which countries allow tobacco advertising and which do not.

- Section 301 countries

  – Introduction of U.S. cigarette in Japan, South Korea, Taiwan and Thailand, along with limited advertising (except Taiwan), has not resulted in increased smoking in those countries.

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- In all three countries that permit advertising, all that occurred was a switch among some consumers from domestic brands to U.S. brands; however, domestic tobacco monopolies continued to dominate the market in those countries.

- The developing world
  - Limited data and information on controls is available, but tends to buttress conclusions regarding no advertising impact.
  - Dr. Eugene M. Lewit considered effects of advertising restrictions in less-developed countries (LDCs): "evidence from a sample of LCDs suggests that the existence of advertising restrictions per se had little if any effect in trends in or on the level of cigarette consumption".

- New Zealand report
  - Toxic Substances Board of New Zealand claimed in report that data from 18 countries "shows that there is a relationship between legislation banning tobacco promotion and reduced uptake of the habit by young persons."
  - Report suffers from methodological and other flaws that invalidate its conclusions; conclusions based on misleading and self-contradictory data.
  - When data corrected and re-analyzed, "trend is for increasing strength of restriction to be associated with smaller drops in consumption. The stronger the restriction, the smaller the annual fall in consumption." (Peter Mullings, chairman, Sage Consultants, Ltd., 1991.)

- The Canada advertising case
  - Quebec Superior Court, struck down as unconstitutional Canada's tobacco advertising ban.
  - Court found "no rational connection" between the means chosen and the legislation's objective of reducing smoking.
  - Court concluded neither TSB report nor any scientific document demonstrated that a ban on advertising would affect consumption.
  - "There is no evidence that advertising as such entails a danger to public health," the Court observed. "As Aristotle said, the word 'dog' never bit anyone."

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Source: https://www.industrydocuments.ucsf.edu/docs/ryhl0000

– The Quebec Court of Appeal subsequently reinstated the advertising ban even though it agreed that the evidence at trial failed to establish that the ban was likely to reduce consumption. The Canadian Supreme Court has agreed to hear a challenge to the Court of Appeal's decision.

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